Hearing Date: September 22, 2023
J:\MANDATES\2021\TC\21-TC-03 Sex Offenders Registration\TC\TOC.docx

ITEM 5
TEST CLAIM
PROPOSED DECISION

Penal Code Section 290.5 as Amended by
Statutes 2017, Chapter 541, Section 12 (SB 384)
Effective Date, January 1, 2018; Operative Date, July 1, 2021
Sex Offender Registration: Petitions for Termination
21-TC-03
County of Los Angeles, Claimant

TABLE OF CONTENTS

Exhibit A

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

For CSM Use Only
Filing Date: RECEIVED June 29, 2022 Commission on State Mandates
TC #: 21-TC-03

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

Senate Bill 384: Sex Offenders: Registration: Criminal Offender Record Information Systems

Section 2

Local Government (Local Agency/School District) Name:

County of Los Angeles

Name and Title of Claimant's Authorized Official pursuant to CCR, tit.2, § 1183.1(a)(1-5):

Arlene Barrera, Auditor-Controller

Street Address, City, State, and Zip:

500 West Temple Street, Room 525, Los Angeles, CA 90012

Telephone Number: (213) 974-8302

Email Address: abarrera@auditor.lacounty.gov

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. (CCR, tit.2, § 1183.1(b)(1-5))

Name and Title of Claimant Representative:

Fernando Lemus, Principal Accountant-Auditor

Organization: County of Los Angeles, Department of the Auditor-Controller

Street Address, City, State, Zip:

500 West Temple Street, Room 603, Los Angeles, CA 90012

Telephone Number: (213) 974-0324

Email Address: flemus@auditor.lacounty.gov

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to Government Code section 17553 and check for amendments to the section or regulations adopted to implement it (refer to completed WORKSHEET on page 5):

Senate Bill No. 384 (201 7-2018 Reg. Sess.)

Penal Code Section 290.5

Statutes of 2017, Chapter 541, Section 12, effective January 1,2018, operative July 1,2021: Sex Offenders: Registration: Criminal Offender Record Information Systems

☑ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 06 / 29 / 2022

☐ A: Which is not later than 12 months (365 days) following [insert effective date] ___/___/_____, the effective date of the statute(s) or executive order(s) pled; or

☑ B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] 07 / 01 / 2021, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

(Gov. Code § 17551(c); Cal. Code Regs., tit. 2, §§ 1183.1(c) and 1187.5.)

Section 5 – Written Narrative:

☑ Includes a statement that actual or estimated costs exceed one thousand dollars ($1,000). (Gov. Code § 17564.)

☑ Includes all of the following elements for each statute or executive order alleged **pursuant to Government Code section 17553(b)(1) (refer to completed WORKSHEET on page 5)**:

☑ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☑ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☑ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

☑ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Following FY: 2022 - 2023 Total Costs: $ 4,506,187

☑ Identifies all dedicated funding sources for this program;

State: None

Federal: None

Local agency's general purpose funds: No dedicated funding source. (General funds to cover costs are used.)

Other nonlocal agency funds: None

Fee authority to offset costs: None

☑ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate:

None

☑ Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order:

None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to Government Code Section 17553(b)(2) and California Code of Regulations, title 2, section 1187.5, as follows (refer to your completed WORKSHEET on page 5 of this form):

☑ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

☑ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

☑ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

☐ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Government Code section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Government Code section 17574.

☑ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to Government Code section 17553(b)(3) and California Code of Regulations, title 2, § 1187.5 (refer to your completed WORKSHEET on page 5 of this form):

☑ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate.
Pages 34 to 62.

☑ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages 155 to 167.

☑ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages 63 to 154.

☑ Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.* (*Cal. Code Regs., tit. 2, § 1187.5*). Pages 10 to 33.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553

☑ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(a)(1-5) of the Commission's regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Arlene Barrera	Auditor-Controller
Name of Authorized Local Government Official pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)	**Print or Type Title**
Arlene Barrera Arlene Barrera (Nov 3, 2022 17:24 PDT)	11/03/2022
Signature of Authorized Local Government Official pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)	**Date**

Test Claim Form Sections 4-7 WORKSHEET

Complete Worksheets for Each New Activity and Modified Existing Activity Alleged to Be Mandated by the State, and Include the Completed Worksheets With Your Filing.

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:
Senate Bill 384 (2017-2018 Regular Session), Statutes of 2017, Chapter 541, Section 12, effective January 1, 2018, operative July 1, 2021

Activity: Senate Bill 384 (2017-2018 Regular Session), Statutes of 2017, Chapter 541, Section 12, effective January 1, 2018, operative July 1, 2021

Establishes procedures for termination from the sex registry for a registered sex offender who is a Tier One or Tier Two offender and who completes his or her mandated minimum registration period under specified conditions

Initial FY: 2021 - 2022 Cost: $ 316,299 Following FY: 2022 - 2023 Cost: $ 610,693

Evidence (if required): Declarations of Bradley McCartt, Daniel Stanley, Tony Sereno, Debra Werbel, and Sung Lee

All dedicated funding sources; State: $0 Federal: $0

Local agency's general purpose funds: $0

Other nonlocal agency funds: $0

Fee authority to offset costs: $0

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:

_____

Activity: _____

_____

Initial FY: ____-____ Cost: _____ Following FY: _____-_____ Cost: _____

Evidence (if required): _____

All dedicated funding sources; State: _____ Federal: _____

Local agency's general purpose funds: _____

Other nonlocal agency funds: _____

Fee authority to offset costs: _____

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number:

_____

Activity: _____

_____

Initial FY: ____-____ Cost: _____ Following FY: _____-_____ Cost: _____

Evidence (if required): _____

All dedicated funding sources; State: _____ Federal: _____

Local agency's general purpose funds: _____

Other nonlocal agency funds: _____

Fee authority to offset costs: _____

INSTRUCTIONS

- **Statute of limitations for filing test claims and test claim amendments.** Local governments may file test claims with the Commission, which shall be filed not later than 12 months (365 days) following the effective date of a statute or executive order, or within 12 months (365 days) of *first* incurring increased costs as a result of a statute or executive order, whichever is later. (Gov. Code §§ 17551(c); Cal. Code Regs., tit. 2, § 1183.1(c), emphasis added.) If the test claim is filed based on the date of first incurring increased costs, evidence of the date of first incurring costs, which would be admissible over an objection in a civil proceeding, must be filed with the test claim or test claim amendment. (Cal. Code Regs., tit. 2, §§ 1183.1(c), 1187.5.) Test claim amendments that add a statute or executive order to an existing test claim shall also be filed within this statute of limitations. (Cal. Code Regs., tit. 2, §§ 1183.1(c).)

  The statute of limitations for filing a test claim may be tolled when local government and the Department of Finance initiate a joint request for a legislatively determined mandate pursuant to Government Code sections 17573 and 17574. (See Gov. Code, §§ 17573(b), 17574(c).) A test claim filed on the same statute or executive order as a legislatively determined mandate pursuant to Government Code section 17574(c) shall be filed within six months of the date an event described Government Code section 17574(c)(1) occurs.

  Failure to timely file a test claim will result in the dismissal of the test claim for lack of jurisdiction. (Gov. Code, § 17551(c); Cal. Code Regs., tit. 2, § 1183.1(f),(g).)

- Complete sections 1 through 8 of the Test Claim Form, including the Worksheet for Sections 4-7, as indicated and note that the first page of the test claim form is the first page of the filing. Do not attach a cover letter, but include all background and arguments in Section 5. Written Narrative. Type all responses. *Failure to complete any of these sections will result in this test claim being returned as incomplete. Pursuant to Government Code section 17553 and California Code of Regulations, title 2, section 1183.1, the Commission will not exercise jurisdiction over statutes and executive orders which are not properly pled. Proper pleading requires that all code sections (including the relevant statute, chapter and bill number), regulations (including the register number and effective date), and executive orders (including the effective date) that impose the alleged mandate are listed in section 4 of the test claim form. Please carefully review your pleading before filing. Test claims may not be amended after the draft proposed decision is issued and the matter is set for hearing, or if the statute of limitations on the statute or executive order being added has expired.* (*Gov. Code, § 17557(e); Cal. Code Regs., tit. 2, §§ 1183.1(c), 1183.6*.)

- Please file the entire test claim, including the Worksheet for Sections 4-7, consistent with the Commission's regulations (Cal. Code Regs., tit.2, § 1181.3) by either of the following methods:

  E-filing. All new test claim filings and supporting written materials shall be filed via the Commission's e-filing system, available on the Commission's website (http://www.csm.ca.gov). Documents e-filed with the Commission shall be in a legible and searchable format using a "true PDF" (i.e., documents digitally created in PDF, converted to PDF or printed to PDF) or optical character recognition (OCR) function, as necessary. Test claims shall be filed on this form prescribed by the Commission and shall be digitally signed by the claimant, using the digital signature technology and authentication process contained herein. The completed test claim form shall be e-filed separately from any accompanying documents. Accompanying documents shall be e-filed together in a single file in accordance with section 1181.3(c)(1). The filer is responsible for maintaining the signed original new filing or written

material for the duration of the test claim process, including any period of appeal (this may be an electronic document, depending on how the filer creates and maintains its records). ***No additional copies are required when e-filing the request.***

Hard Copy Filing Cases of Undue Hardship or Significant Prejudice. If e-filing legible and searchable PDF documents, as described in section 1181.3(c)(1) of the Commission's regulations, would cause the filer undue hardship or significant prejudice, the filer may submit a written request to the executive director to file in hard copy and may file the request by first class mail, overnight delivery, or personal service. Only upon prior approval by the executive director of a written request for a significant hardship or prejudice exception to the e-filing requirement, may a filing be made via hard copy.

Within 10 days of the filing of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty 30 calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may then be accepted on the same statute or executive order alleged to impose a mandate. (*Cal. Code Regs., tit.2, § 1183.1*.)

You may download this form from our website at www.csm.ca.gov. If you have questions, please contact us: Email: csminfo@csm.ca.gov; Telephone: (916) 323-3562; or Website: www.csm.ca.gov

CSM Test Claim Form

Final Audit Report 2022-11-04

Created:	2022-11-03
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAkAcWUAQniP4hpcyhFx-cD7R3SGGtla1

"CSM Test Claim Form" History

Document created by CSM Sign (csmsign@csm.ca.gov)
2022-11-03 - 9:21:02 PM GMT

Document emailed to flemus@auditor.lacounty.gov for filling
2022-11-03 - 9:21:28 PM GMT

Email viewed by flemus@auditor.lacounty.gov
2022-11-03 - 9:38:50 PM GMT

Signer flemus@auditor.lacounty.gov entered name at signing as Fernando Lemus
2022-11-03 - 11:50:24 PM GMT

Form filled by Fernando Lemus (flemus@auditor.lacounty.gov)
Form filling Date: 2022-11-03 - 11:50:26 PM GMT - Time Source: server

Document emailed to ewu@auditor.lacounty.gov for filling
2022-11-03 - 11:50:28 PM GMT

Email viewed by ewu@auditor.lacounty.gov
2022-11-03 - 11:51:46 PM GMT

Signer ewu@auditor.lacounty.gov entered name at signing as Elaine Wu
2022-11-03 - 11:59:57 PM GMT

Form filled by Elaine Wu (ewu@auditor.lacounty.gov)
Form filling Date: 2022-11-03 - 11:59:59 PM GMT - Time Source: server

Document emailed to Arlene Barrera (abarrera@auditor.lacounty.gov) for signature
2022-11-04 - 0:00:00 AM GMT

Email viewed by Arlene Barrera (abarrera@auditor.lacounty.gov)
2022-11-04 - 0:23:40 AM GMT

Document e-signed by Arlene Barrera (abarrera@auditor.lacounty.gov)

Signature Date: 2022-11-04 - 0:24:04 AM GMT - Time Source: server

Agreement completed.

2022-11-04 - 0:24:04 AM GMT

COUNTY OF LOS ANGELES TEST CLAIM

SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL OFFENDER RECORD INFORMATION SYSTEMS

Statutes of 2017, Chapter 541, Section 12: Sex Offenders: Registration: Criminal Offender Record Information Systems
Senate Bill No. 384 (2017-2018 Regular Session)
Amending Penal Code Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5 and 4852.03

TABLE OF CONTENTS

COUNTY OF LOS ANGELES TEST CLAIM

SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL OFFENDER RECORD INFORMATION SYSTEMS

Statutes of 2017, Chapter 541, Section 12: Sex Offenders: Registration: Criminal Offender Record Information Systems
Senate Bill No. 384 (2017-2018 Regular Session)
Amending Penal Code Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5 and 4852.03

TABLE OF CONTENTS

(CONTINUED)

SECTION 5: WRITTEN NARRATIVE

COUNTY OF LOS ANGELES TEST CLAIM

SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL OFFENDER RECORD INFORMATION SYSTEMS

(Statutes of 2017, Chapter 541, Section 12: Sex Offenders: Registration: Criminal Offender Record Information Systems
Senate Bill No. 384 (2017-2018 Regular Session)
Amending Penal Code Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5 and 4852.03)

SECTION 5: WRITTEN NARRATIVE
COUNTY OF LOS ANGELES TEST CLAIM
Statutes of 2017, Chapter 541, Section 12: Sex Offenders: Registration: Criminal Offender Record Information Systems
Senate Bill No. 384 (2017-2018 Regular Session)
Amending Penal Code Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5 and 4852.03

I. STATEMENT OF THE TEST CLAIM

Senate Bill (SB) 384 amended section 290 of the California Penal Code (PC), known as the Sex Offender Registration Act. Prior to the passage of SB 384, individuals convicted of certain sex offenses were required to register as a sex offender for the rest of their lives, irrespective of the severity of the crime. SB 384 takes into consideration the seriousness of the offender's criminal history, the empirically assessed risk level of the offender, and whether the offender is a recidivist or has violated California's sex offender registration law. The purpose of SB 384 is to restore the effectiveness of the registry by removing the number of registrants that research has shown are now low risk of reoffending. This, in turn, would enhance law enforcement's ability to differentiate between higher- and lower-risk offenders.

SB 384 states that, commencing on July 1, 2021, California must transition from a lifetime-based sex offender registration to a tier-based system. Existing law requires persons convicted of specified sex offenses and certain acts of human trafficking to register with local law enforcement agencies (LEA) while residing in the State or while attending school or working in the State. SB 384 established three tiers of registration based on specified criteria, for periods of at least 10 years, at least 20 years, and life, respectively, for a conviction of specified sex offenses, and five years and 10 years for Tiers One and Two, respectively, for an adjudication as a ward of the juvenile court for specified sex offenses, as specified.

SB 384 establishes procedures for termination from the sex offender registry for a registered sex offender who is a Tier One or Tier Two offender and who completes his or her mandated minimum registration period under specified conditions. SB 384 requires the offender to file a petition at the expiration of his or her minimum registration period and would authorize the district attorney (DA) to request a hearing on the petition if the petitioner has not fulfilled the requirement of successful tier completion, as specified. SB 384 establishes procedures for a person required to register as a Tier Three offender based solely on his or her risk level to petition the court for termination from the registry after 20 years from release of custody, if certain criteria are met.

A. DESCRIPTION OF THE NEW MANDATED ACTIVITIES

SB 384 added PC section 290.5, which became effective on July 1, 2021, and creates a new post-conviction process for registered sex offenders and newly-created activities for LEAs, the DA's office, and the Public Defender's office (PD). PC § 290.5(a)(1) permits

registrants to petition the superior court or juvenile court in their county of residence for termination of their requirement to register as a sex offender in California on or after July 1, 2021. The registrant must serve the petition on the registering LEA, the LEA in the county of conviction, and the respective DA's office. PC § 290.5 mandates that LEA personnel thoroughly review each petition to ascertain if the individual is eligible for termination from the registry if they meet certain conditions.

The California Department of Justice (DOJ) website refers individuals to contact their local PD's office or a private attorney for information on how to file a petition under PC § 290.5.[1] In order to comply with the requirements in PC § 290.5(a)(2) to file and serve the petition on LEAs and DA offices, the PD performs the following new activities: gather records, conduct necessary research, assess the petitioner's eligibility, and prepare and file the petition. The PD's office must comply with PC § 290.5(a)(2) and serve copies of the petition on the superior or juvenile court, the registering agency, and the DA's office.

The activities listed in PC § 290.5(a)(2) are newly mandated activities for the PD. Once a PD client is sentenced, the PD's duties cease with respect to that client except in limited circumstances.[2] For these limited circumstances, the PD has a Post-Conviction Unit responsible for handling post-conviction matters, including PC § 290.5 petition matters. This unit has completed a two-hour training on how to handle PC § 290.5 cases and has received instruction on how to time code their work so that costs could be calculated accordingly.[3,4] Standard petition requests may require a few hours; however, petitions involving out-of-state sex offenses with statutes that do not necessarily correspond to the CA Penal Code require additional time and research.[5] Once it is decided that a petition is warranted, a deputy PD completes and signs the necessary forms. If the DA requests a hearing on a petition pursuant to PC § 290.5(a)(3), the PD would engage the assistance of its paralegals, social workers, investigators, and expert witnesses in preparation for the hearing.

PC § 290.5(a)(2) creates newly mandated activities for LEAs. PC § 290.5(a)(2) requires that the registering LEA and the LEA of the county of conviction of a registrable offense shall, within 60 days of receipt of the petition, report to the DA and the superior court or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination from the registry. As a result of this mandate, Los Angeles Sheriff Department (LASD) personnel must thoroughly review each petition, which includes conducting local and national records checks to identify criminal convictions, post-conviction time spent in custody, and calculate convictions and time served pursuant to PC § 290.[6] This process may not be automated and may require numerous steps to

[1] Declaration of Debra Werbel - Attachment A.

[2] The Sexually Violent Predator Act added Welfare and Institutions Code § 6601, which has been deemed a mandate, requires the public defender to represent previously convicted persons in civil commitment hearings.

[3] Declaration of Debra Werbel

[4] Declaration of Debra Werbel

[5] Declaration of Daniel Stanley

[6] Declaration of Daniel Stanley

coordinate, including phone calls, regular U.S. mail, and fax. This process can take between one to two hours depending on the complexity of the petitioner's criminal history, with out-of-state convictions taking considerably longer.[7] Each LASD detective and/or law enforcement technician tasked with overseeing registered sex offenders was required to attend two State of California SB 384 information sessions. Each session was approximately 3 ½ hours long.[8]

PC § 290.5(a)(2) creates newly mandated activities for the DA's office. PC § 290.5(a)(2) requires that the petition shall be served on the DA where the petition is filed and on the DA of the county of conviction of the registrable offense. In preparation for the launch of the PC § 290.5 program, the DA's office created a system accommodation in their Prosecutorial Information Management System (PIMS) in order to handle petitions. Additionally, the DA created an Excel spreadsheet and a shared drive capable of tracking petitions.[9] Further, the petition and all accompanying documents must be scanned and entered into PIMS.

PC § 290.5(a)(2) states that the DA in the county where the petition is filed may, within 60 days of receipt of the report from either the registering LEA, the LEA of the county of conviction of a registerable offense if different than the county where the petition is filed, or the DA of the county of conviction of a registerable offense, request a hearing on the petition if the petitioner has not fulfilled the requirement described in subdivision (e) of Section 290, or if community safety would be significantly enhanced by the person's continued registration.[10] In order to comply with this mandate, the DA must retrieve court records (local and out of county) and review case documents and risk assessment tools to determine whether the petitioner is eligible and appropriate for removal from the registry in relation to public safety. The DA must submit a California Judicial Council Form to the court and defense counsel.[11]

The court may grant a PC § 290.5 petition unless the DA's office requests a hearing. PC § 290.5(3) states that if the DA requests a hearing, the DA shall be entitled to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration.[12] At the hearing, a judge can consider the following factors: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of offense; criminal and non-criminal behavior before and after the conviction for the registerable offense; the time period during which the person has not reoffended; successful treatment of a sex offender treatment program and the person's risk of sexual or violent re-offense, including risk

[7] Declaration of Daniel Stanley

[8] Penal Code § 290.5(a)(2); Declaration of Daniel Stanley

[9] Declaration of Bradley McCartt

[10] Declaration of Bradley McCartt

[11] Declaration of Bradley McCartt

[12] Penal Code § 290.5(a)(3); Declaration of Bradley McCartt

levels based on risk assessment tools; or any other evidence submitted by the parties, which is reliable, material and relevant.[13]

PC § 290.5(a)(3) states that any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties, which is reliable, material, and relevant. As a result of this new hearing process, the DA and PD must collect affidavits, declarations, police reports, and any other relevant evidence for consideration by the court. A petitioner must be represented at this hearing by an attorney who understands the law, court process, and rules of evidence.[14]

B. DESCRIPTION OF THE EXISTING ACTIVITIES AND COSTS MODIFIED BY THE MANDATE

SB 384 created a process by which sex offender registrants can petition to have themselves removed from the sex offender list. In enacting PC § 290.5(a)(2), the County of Los Angeles (County or Claimant) is now responsible for receiving up to 1,859 petitions and reporting the receipt of petitions to the DOJ. Also, if an offense that may require registration is identified, which had not previously been assessed by the DOJ, Claimant must refer that conviction to the DOJ for assessment and a determination of whether the conviction changes the tier designation assigned by the DOJ to the offender pursuant to PC § 290.5(a)(2). Claimant is required to report to the DA and the court if the DOJ requests an extension of time to complete the tier designation. Further, Claimant must report to the DA and the superior court as to whether the person has met the requirements of being terminated from the registry.[15] Accordingly, Claimant has incurred costs associated with training and maintaining staff in order to receive, review, and report on petitions pursuant to PC § 290.5(a)(2).

The new PC § 290.5 petition process requires a court ruling, which necessitates the appearance of the DA and petitioner's counsel. Further, the DA may request a full evidentiary hearing pursuant to PC § 290.5(a)(3), which results in added duties on the part of the DA and PD in order to put forth their case and provide a defense at these hearings.[16] Since PC § 290.5 is a new petition process, the DA and defense counsel are now required to engage in the aforementioned activities and, in turn, have incurred and will continue to incur increased costs.[17]

[13] Penal Code § 290.5(a)(3); Declaration of Bradley McCartt; Declaration of Debra Werbel

[14] Declaration of Debra Werbel

[15] Declaration of Daniel Stanley

[16] Declaration of Debra Werbel; Declaration of Bradley McCartt

[17] Declaration of Debra Werbel; Declaration of Bradley McCartt

C. ACTUAL INCREASED COSTS INCURRED BY THE CLAIMANT DURING THE FISCAL YEAR FOR WHICH THE CLAIM WAS FILED TO IMPLEMENT THE ALLEGED MANDATE

The LASD has incurred $27,407 in costs associated with receiving and reviewing petitions under PC § 290.5(a)(2) in fiscal year (FY) 2021-2022.[18] The DA has incurred costs of $198,835 associated with its requirement to review and process petitions in FY 2021-2022.[19] The PD has incurred $90,057 in costs associated with training on PC § 290.5 and in filing petitions under PC § 290.5(a)(2) in FY 2021-2022.[20]

D. ACTUAL OR ESTIMATED ANNUAL COSTS THAT WILL BE INCURRED BY THE CLAIMANT TO IMPLEMENT THE ALLEGED MANDATE DURING THE FISCAL YEAR IMMEDIATELY FOLLOWING THE FISCAL YEAR FOR WHICH THE TEST CLAIM WAS FILED

The LASD estimates costs associated with reviewing and processing petitions under PC § 290.5(a)(2) at $27,705 for FY 2022-23.[21] The DA estimates costs associated with reviewing and processing petitions under PC § 290.5(a)(2) and preparing for evidentiary hearings under § 290(a)(3) at $294,110 for FY 2022-23.[22] The PD estimates costs associated with filing petitions under PC § 290.5(a)(2) and defending clients during evidentiary hearings under PC § 290.5(a)(3) at $288,878 for FY 2022-23.[23]

E. STATEWIDE COST ESTIMATE OF INCREASED COSTS THAT ALL LOCAL AGENCIES WILL INCUR TO IMPLEMENT THE MANDATE

According to the California Sex and Arson Registry (CSAR) report dated May 25, 2022, there are 48,535 registrants statewide who are potentially eligible over the next 20 years to petition under SB 384. While exact costs are unknown, the Claimant reasonably estimates annual statewide costs to be $4,506,187.[24]

F. IDENTIFICATION OF ALL DEDICATED FUNDING SOURCES FOR THIS PROGRAM

The Claimant is not aware of any State, federal, or non-local agency funds available for this program. All the increased cost was paid and will be paid from the Claimant's General Fund appropriations.[25]

[18] Declaration of Daniel Stanley

[19] Declaration of Tony Sereno

[20] Declaration of Sung Lee

[21] Declaration of Daniel Stanley

[22] Declaration of Tony Sereno

[23] Declaration of Sung Lee

[24] 48,535 registrants multiplied by 1/20th multiplied by $1,856.69 County cost per petition

[25] Declaration of Sung Lee; Declaration of Tony Sereno; Declaration of Daniel Stanley

G. IDENTIFICATION OF PRIOR MANDATED DETERMINATIONS MADE BY THE BOARD OF CONTROL OR COMMISSION ON STATE MANDATES

The Claimant is not aware of any prior determination made by the Board of Control or the Commission on State Mandates related to this matter.[26]

H. IDENTIFICATION OF LEGISLATIVELY-DETERMINED MANDATES THAT ARE ON THE SAME STATUTE OR EXECUTIVE ORDER

The Claimant is not aware of any legislatively-determined mandates related to SB 384, Chapter 541 Statutes of 2017, pursuant to Government Code § 17573.

II. MANDATE MEETS BOTH SUPREME COURT TESTS

In *County of Los Angeles v. State of California*, 43 Cal.3d 46 (1987), the Supreme Court was called upon to interpret the phrase "new program or higher level of service", language that was approved by the voters when they passed Proposition 4 in 1979, which added article XIII B to the California Constitution. In reaching its decision, the Court held that:

> ". . . the term 'higher level of service' . . . must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs'. But the term 'program' itself is not defined in Article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local government and do not apply generally to all residents and entities in the state[27]."

A program can either carry out the governmental function of providing services to the public or be a law that implements State policy that imposes unique requirements on the local government that does not apply to the entire State. Only one part of this definition has to apply in order for the mandate to qualify as a program. SB 384's mandated activities meet both prongs.[28]

[26] Declaration of Sung Lee

[27] *County of Los Angeles v. State of California (1987)* 43 Cal. 3d 46, 56

[28] *Carmel Valley Fire Protection District v. State of California (1987)* 190 Cal.App. 3d 521, 537

III. MANDATE IS UNIQUE TO LOCAL GOVERNMENT

The sections of the law alleged in this Test Claim (TC) are unique to the Claimant. The activities described in section A are provided by local government agencies.

IV. MANDATE CARRIES OUT STATE POLICY

The new State statute, the subject of this TC, imposes a higher level of service by requiring local agencies to provide the mandated activities described in section A.

V. STATE MANDATE LAW

Article XIII B § 6 requires the State to provide a subvention of funds to local government agencies any time the legislature or a state agency requires the local government agency to implement a new program or provide a higher level of service under an existing program. Section 6 states in relevant part:

> Whenever the legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service . . .

The purpose of § 6 "is to preclude the state from shifting financial responsibility for carrying our governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[29] The section was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues.[30] In order to implement § 6, the Legislature enacted a comprehensive administrative scheme to define and pay mandate claims.[31] Under this scheme, the Legislature established the parameters regarding what constitutes a State-mandated cost, defining "costs mandated by the state" to include:

> …any increased costs which a local agency is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of § 6 of Article XIII B of the California Constitution.[32]

[29] *County of San Diego v. State of California (1997)* 15 Cal. 4th 68, 81; *County of Fresno v. State of California (1991)* 53 Cal. 3d 482, 487

[30] *County of Fresno v. State of California (1991)* 53 Cal. 3d 482, 487*; Redevelopment Agency v. Commission on State Mandates (1997)* 55 Cal.App.4th 976-985

[31] Government Code § 17500, et seq.; *Kinlaw v. State of California (1991)* 54 Cal. 3d 326, 331, 333

[32] Government Code § 17514

VI. STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code § 17556, which could serve to bar recovery of "costs mandated by the State", as defined in Government Code § 17556. None of the seven disclaimers apply to this TC:

1. The claim is submitted by a local agency or school district, which requests legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. The statute or executive order implemented a Federal law or regulation and resulted in costs mandated by the Federal government, unless the statute or executive order mandates costs which exceed the mandate in that Federal law or regulation.

4. The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

5. The statute or executive order provides for offsetting savings to local agencies or school districts, which result in no net costs to the local agencies or school districts or includes additional revenue that was specifically intended to fund costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

6. The statute or executive order imposes duties, which were expressly included in a ballot measure approved by the voters in Statewide election.

7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.[33]

None of the disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement apply to this TC.

The enactment of SB 384 imposes new State-mandated activities and costs on the Claimant, and none of the exceptions in Government Code § 17556 excuse the State from reimbursing Claimant for the costs associated with implementing the required activities. SB 384, therefore, represents a State mandate for which the Claimant is entitled to reimbursement pursuant to § 6 of the State Constitution.

[33] Government Code § 17514

VII. CONCLUSION

SB 384, Chapter 541, Statutes of 2017, imposes State-mandated activities and costs on the Claimant. Those State-mandated costs are not exempted from the subvention requirements of § 6 of the State Constitution. There are no funding sources, and the Claimant lacks authority to develop and impose fees to fund any of these new State-mandated activities. Therefore, Claimant respectfully requests that the Commission on State Mandates find that the mandated activities set forth in the TC are State mandates that require subvention under the California Constitution § 6.

SECTION 6: DECLARATIONS

COUNTY OF LOS ANGELES TEST CLAIM

SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL OFFENDER RECORD INFORMATION SYSTEMS

DECLARATION OF BRADLEY L. MCCARTT

I, Bradley L. McCartt, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) District Attorney's (DA) Office and hold the title of Deputy-In-Charge. I am assigned to the District Attorney's Sex Crimes Division and am the supervisor of Stuart House, a child advocacy center. I am the District Attorney's expert on Sex Offender Registration and as part of my duties handle California Penal Code (PC) Section 290.5 Sex Offender Petitions for removal from California's Sex Offender Registry.

1. PC section 290, also known as the Sex Offender Registration Act, requires registration on specified sexual offenses. California has the oldest and largest sex offender registry in the United States and there are currently over 146,000 individuals in the registry. The California Department of Justice (DOJ) estimates that approximately 4,000 registrants would be eligible to petition for termination from the registry in Los Angeles County retroactively. (See Attachment A) This number does not include the new registrants who will be eligible each year moving forward in perpetuity.

2. Prior to the passing of SB 384, which added PC section 290.5, all registerable sex crimes offenses required lifetime registration. SB 384 states that, commencing on January 1, 2021, California must transition from a lifetime-based sex offender registration system to a tier-based system. Commencing on January 1, 2021, SB 384 established three tiers of registration for adult sex offenders based on specified criteria for periods of 10 years, 20 years, and life, thus completely reforming PC 290 et. seq. Therefore, California had to transition from lifetime registration to tiered registration by the change in the penal code made by SB 384. Juvenile offenders are required to register as a sex offender for a minimum of either five years or 10 years, as specified. To implement and maintain the new tier-based sex offender registry requires a significant effort that impacts registering agencies, courts, and district attorneys.

3. PC section 290.5(a)(1) permits registrants who meet certain requirements to petition the superior court or juvenile court, in their county of residence, for termination of their requirement to register as a sex offender in California.

4. PC section 290.5(a)(2) states that the petition shall be served on the district attorney in the county where the petition is filed and on the district attorney of the county of conviction of a registrable offense if different than the county where the petition is filed.

5. The County DA's Office began incurring costs for this mandated program on July 1, 2021.

6. PC section 290.5(a)(2) requires the DA's Office to review the petition and case documents to determine if a hearing to oppose the petition will be requested. Further, the handling district attorney has 60 days from receipt of the California Sex and Arson Registry (CSAR) worksheet to complete this review and to complete and submit a California Judicial Council Form (CR-417) (California Rule of Courts1.31 Use of Mandatory Forms) to the court and defense counsel. (PC 290.5(a)(2)). In order to comply with PC section 290.5(a)(2), the district attorney must do the following:

    a. Upon receipt of the petition, a DA employee and a Legal Office Support Assistant (LOSA) or Paralegal must timestamp and document receipt of the petition.

    b. The petition must be logged into an Excel spreadsheet for tracking and assignment to a Deputy District Attorney.

    c. The petition and all accompanying documents must be scanned and entered/uploaded into the Prosecutor Information Management System (PIMS) case management system.

    d. The handling Deputy District Attorney must retrieve court records (local and out of county) and review case documents, as well as risk assessment tools (Static 99-R), to determine whether the petitioner is eligible and appropriate for removal from the registry in relation to public safety.

7. PC section 290.5(a)(3) requires that an official court ruling be made on the record. This results in the Deputy District Attorney either appearing for the petition to be granted or conducting a full public safety hearing.

8. If the district attorney requests a hearing, PC section 290.5(a)(3) states that the DA may present evidence regarding whether community safety would be significantly enhanced by requiring continued registration.

9. The district attorney must prepare for hearing since PC 290.5(a)(3) requires that the court "shall consider" the following: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for less than 24 hours); criminal and relevant noncriminal behavior before and after conviction for the registerable offense; the time period during which the person has not reoffended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and the person's current risk of sexual or violent re-offense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available. Any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties, which is reliable,

material, and relevant.

10. In preparation for the implementation of SB 384's mandated activities, the DA's Office created systems accommodations necessary for the handling of petitions in the PIMS case management system. All DA offices in the state of California use a case management system for handling criminal cases. In Los Angeles County, all court activity, including the receipt of petitions and the calendaring of court appearances, is done using the Trial Courts Information System (TCIS). This communicates with PIMS and is the method by which DA personnel are made aware of court appearances, court actions, uploaded documents, and deputy DA assignments.

    a. Systems personnel and I had to author a guide "Get Going with SB 384 in PIMS" for Deputy District Attorney and support staff use.

    b. In preparation for the implementation of SB 384's mandated activities, DA personnel had to create an Excel spreadsheet and shared drive capable of tracking petitions. This was required because PC 290.5 lays out a timeline requirement for District Attorney responsibilities. Therefore, each of these responsibilities must be tracked. This includes tracking the date of receipt of the petition, responding to the court within 60 days of law enforcement's completion of a CSAR eligibility worksheet, and filing of mandated Judicial Council Forms.

11. I have conducted five 90-minute trainings for DA personnel in preparation for the processing of forms and courtroom litigation of petitions as described above. This included instructing on mandatory timelines, rules of service as established by PC 290.5, explanation of all relevant evidence as listed in PC 290.5 when litigating a petition opposition, how to read a law enforcement CSAR form, the required rulings which must be made by the courts on the record, and how to handle petitions which were illegally filed.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 1st day of September 2022 in Los Angeles, CA

Bradley L. McCartt

Bradley L. McCartt
Deputy-In-Charge, Sex Crimes Division
District Attorney's Office
County of Los Angeles

CSAR REGISTRANT NUMBERS AS OF MAY 7, 2021
(figures do not include incarcerated, out-of-state or deported registrants)

COUNTY	ADULT REGISTRANTS	JUVENILE REGISTRANTS	TOTAL PER COUNTY
ALAMEDA	2275	58	2333
ALPINE	6	1	7
AMADOR	103		103
BUTTE	797	19	816
CALAVERAS	123		123
COLUSA	50	1	51
CONTRA COSTA	1398	32	1430
DEL NORTE	155	6	161
EL DORADO	382	3	385
FRESNO	2501	103	2604
GLENN	81	2	83
HUMBOLDT	455	7	462
IMPERIAL	264	2	266
INYO	45	1	46
KERN	2133	58	2191
KINGS	393	22	415
LAKE	319	7	326
LASSEN	101	2	103
LOS ANGELES	14745	232	14977
MADERA	428	8	436
MARIN	154	2	156
MARIPOSA	74	2	76
MENDOCINO	255	4	259
MERCED	772	17	789
MODOC	58		58
MONO	20		20
MONTEREY	681	17	698
NAPA	186	3	189
NEVADA	190	4	194
ORANGE	2993	32	3025
PLACER	590	7	597
PLUMAS	61	1	62
RIVERSIDE	4351	67	4418
SACRAMENTO	4077	103	4180
SAN BENITO	139	2	141
SAN BERNARDINO	4823	61	4884
SAN DIEGO	4490	55	4545
SAN FRANCISCO	1075	17	1092
SAN JOAQUIN	1865	33	1898
SAN LUIS OBISPO	478	4	482
SAN MATEO	706	4	710

*As of 5/7/21

DO NOT DISTRIBUTE – FOR LAW ENFORCEMENT USE ONLY

COUNTY	ADULT REGISTRANTS	JUVENILE REGISTRANTS	TOTAL PER COUNTY
SANTA BARBARA	706	13	719
SANTA CLARA	3296	38	3334
SANTA CRUZ	402	3	405
SHASTA	813	16	829
SIERRA	10		10
SISKIYOU	219	2	221
SOLANO	980	27	1007
SONOMA	793	4	797
STANISLAUS	1370	31	1401
SUTTER	306	10	316
TEHAMA	347	8	355
TRINITY	69		69
TULARE	1172	46	1218
TUOLUMNE	166	6	172
VENTURA	1110	16	1126
YOLO	387	10	397
YUBA	357	12	369
TOTAL:	**67295**	**1241**	**68536**

Please note that the above figures were current at the time the report was created on May 7, 2021. Because registration events take place every day which may change registrant numbers in each county, these figures are intended only to serve as a snapshot. Your county's registrant figures may vary from day to day.

Approximately 22,300 registrants are incarcerated as of May 7, 2021.

The Department of Justice has previously estimated that approximately 30% of sex offender registrants in a jurisdiction may be eligible to petition for relief from registration pursuant to Penal Code section 290.5 on July 1, 2021. However, this figure does not consider tolling, pending charges, supervision status, custody status, risk assessment level or potential Tier 2 exception status, and is based solely on the individuals' registrable offense(s) and the dates of conviction(s) and/or adjudication(s) of their registrable offense(s).

Please also note that this figure does not account for the statutory requirement in Penal Code section 290.5(a)(1), as amended effective July 1, 2021, that individuals petition on or after their next birthday after July 1, 2021, following the expiration of the mandated minimum registration period, a requirement which previously existed for juvenile registrants and was recently added to statute for adult registrants as a result of Senate Bill 118.

Although a number of registrants may be eligible to petition for relief from registration on July 1, 2021, and throughout the following year, it is unknown how many registrants who meet eligibility requirements for petitioning will, in fact, file petitions. It is also unknown how many registrants who do not meet eligibility requirements for petitioning will nevertheless file petitions for relief from registration.

DECLARATION OF DANIEL STANLEY

I, Daniel Stanley, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief.

1. I am employed by the County of Los Angeles Sheriff's Department (LASD) and hold the title of Lieutenant in the department's Special Victims Bureau. I am responsible for oversight of the Sexual Assault Felony Enforcement (SAFE) team, which includes the overall management of those required to register as sex offenders at local LASD stations.

2. Senate Bill (SB) 384 added Penal Code (PC) section 290.5 and imposes requirements on LASD personnel charged with management of their local sex offender populations. Pursuant to PC section 290.5, all current and future registered sex offenders would be placed into a "three-tier" system. Those placed by the State in either Tier 1 or Tier 2 would be allowed to petition courts to be relieved from having to register as a sex offender, provided specific conditions had been met. PC section 290.5(a)(1) mandates that every registered sex offender meeting these new requirements serve a petition on the law enforcement agency (e.g., LASD Station) at which they register.

3. PC section 290.5(a)(2) mandates that a person serve their petition on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency of the county of conviction. The registering law enforcement agency and the law enforcement agency in the county of conviction of a registrable offense, if different than the county of where the petition is filed, shall, within 60 days of receipt of the petition, report to the district attorney and the superior court regarding whether the person has met the requirements for termination pursuant to PC section 290(e).

4. In order to comply with the mandate in PC section 290.5(a)(2), LASD personnel must thoroughly review each petition and complete the California Sex and Arson Registrant (CSAR) worksheet created by the California Department of Justice (DOJ) to ascertain if the individual is eligible. This process can take between one to two hours depending on the complexity of the petitioner's criminal history. Petitions that involve out-of-state convictions can take considerably longer to review and process. To thoroughly review petitions that involve out-of-state arrests and convictions, LASD personnel may need to reach out to law enforcement agencies, courts, and custodial facilities in those states to ascertain the type of criminal conviction and accurately calculate time served. This process may not be automated and may require numerous steps to coordinate, including phone calls, snail mail and fax.

5. There are approximately 54 LASD employees, both sworn and civilian,

responsible for registered sex offenders at LASD stations that must be trained in the SB 384 petition review process. Currently, the DOJ facilitates the four-hour introductory CSAR training sessions

6. The LASD began incurring costs July 1, 2021. For Fiscal Year (FY) 2021-2022, the LASD estimates costs associated with the implementation of SB 384 at $27,407 consisting of 184 (92x2) hours of petition review at the Bonus I Deputy rate of $148.95/hour.

7. Using the CSAR report dated May 25, 2022, the LASD estimates that there are 4,225 eligible registrants that my fall into either Tier 1 or Tier 2 in Los Angeles County and that would be required to register at one of 23 LASD stations. Of these 4,225 eligible registrants, LASD reasonably estimates that 44% (1,859) may be eligible to petition over the next 20 years. The LASD reasonably estimates that 1/20th of eligible petitioners may petition in FY 2022-23. At this time, the LASD estimates two (2) hours of work for each petition at the Bonus Deputy I hourly rate of $148.95. The process of reviewing petitions includes conducting local and national records checks to identify criminal convictions, post-conviction time spent in custody, calculating convictions and time pursuant to PC section 290 (e), and completing the DOJ worksheet. This results in an estimated cost of approximately $297.90 per petition. Based on these figures, the LASD estimates incurring costs of $27,705 for FY 2022-23.

8. For the FY 2022-23 statewide cost estimate of increased costs that local agencies will incur to implement the mandated activities, using the CSAR report dated May 25, 2022, the LASD reasonably estimates that there are 48,535 eligible petitioners in the State. LASD estimates that 1/20th (2,427) of the 48,535 Tier 1 or Tier 2 sex offenders may petition each year. Using the aforementioned $297.90 cost per petition, the LASD estimates an increased statewide cost of $723,003 in FY 2022-23.

9. LASD has not received any local, State, or federal funding to offset the increased direct and indirect costs as a result of its compliance with PC section 290.5.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 1st day of September 2022 in Los Angeles, CA.

Daniel Stanley

Daniel Stanley
Lieutenant, Special Victims Bureau
Los Angeles Sheriff's Department
County of Los Angeles

Declaration of Tony Sereno

I, Tony Sereno, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) District Attorney's (DA) Office and hold the title of Administrative Deputy, DA. I am responsible for oversight and management of the Bureau of Administrative Services, which includes the Budget and Fiscal Services Division, Property Management and Support Services Division, Human Resources Division, and Systems Division. My job responsibilities include the complete and timely recovery of costs related to services mandated by the State.

2. California Penal Code (PC) Section 290, The Sex Offender Registration Act, requires registration on specified sexual offenses. California has the oldest and largest sex offender registry in the United States with more than 146,000 individuals currently in the registry. Los Angeles County has more than 15,000 registered sex offenders.

3. Prior to the passing of Senate Bill (SB) 384, all registerable sex crimes offenses required lifetime registration. SB 384 mandated that California transition from a lifetime-based sex offender registration system to a tier-based system by January 1, 2021. This included the establishment of three registration tiers for adult sex offenders based on specified criteria for periods of 10 years, 20 years, and life. Juvenile offenders are required to register as a sex offender for a minimum of either five years or 10 years, as specified.

4. Pursuant to SB 384, on or after July 1, 2021, registrants that meet certain requirements may petition the superior court or juvenile court, in their county of residence, for termination of their requirement to register as a sex offender in California.

5. SB 384 requires the DA's Office to complete a review of a petition and case documents to determine if a hearing to oppose the petition will be requested. The DA's Office was also required to implement changes to its Prosecutorial Information Management System (PIMS) case management system to manage the new process mandated by SB 384.

6. SB 384 requires that an official court ruling be made on the record. This results in a Deputy DA either appearing for the petition to be granted or conducting a full public safety hearing. As a result, implementation of the tier-based sex offender registry imposes additional workload, training, and costs that impact the DA's Office.

7. The DA's Office has incurred $198,835 in costs during Fiscal Year (FY) 2021-22 for additional work that is mandated by SB 384. Those costs are shown in the table below.

Expenditure	Hours	Cost
Upgrades to PIMS application	354	$ 36, 693
07/01/2021 – 12/31/2021	1,117	$ 96,092
01/01/2022 – 04/30/2022	754	$ 66,050
Total		$ 198,835

8. The DA's Office has not received any local, State, or federal funding to offset the increased direct and indirect costs associated with the processing of the petitions submitted on behalf of individuals subject to SB 384.

9. Using the California Sex and Arson Registry (CSAR) report dated May 25, 2022, the DA's Office estimates that there are 7,480 eligible petitioners in Los Angeles County. The DA reasonably estimates that these registrants may be eligible to petition over the next 20 years and that 1/20th of eligible petitioners (374) may petition in FY 2022-23. At this time, the DA's Office estimates 7.6 hours of work for each petition, comprised of 4.6 attorney hours and 3.0 legal support staff hours. The hourly rate for a Deputy District Attorney III is $136.65 and the hourly rate for a Legal Office Support Assistant II is $52.60. This results in an estimated cost of approximately $786.39 per petition. Based on these figures, the DA's Office estimates incurring costs of $294,110 for FY 2022-23.

10. For the statewide cost estimate of increased costs that local agencies will incur to implement the mandated activities, using the CSAR report dated May 25, 2022, the DA's Office reasonably estimates that there are 48,535 eligible petitioners in the State. The DA estimates that 1/20th (2,427) of the 48,535 Tier 1 or Tier 2 sex offenders may petition each year. Using the aforementioned $786.39 cost per petition, the DA's Office estimates an increased statewide cost of $1,908,569 in FY 2022-23.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 10th day of June 2022 in Los Angeles, California.

Tony Sereno
Administrative Deputy, DA
District Attorney's Office
County of Los Angeles

DECLARATION OF DEBRA WERBEL

I, Debra Werbel, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief.

1. I am employed by the County of Los Angeles Office of the Public Defender (PD) and hold the title of Head Deputy. I am responsible for the oversight of the PD staff assigned to the Post-Conviction Unit. This Unit handles post-conviction matters, including handling cases involving Senate Bill (SB) 384, which added Penal Code section 290.5.

2. Prior to the passage of SB 384, individuals convicted of certain sex offenses were required to register as a sex offender for the rest of their lives irrespective of the severity of the crime. These individuals' information would be placed on the Megan's Law website, which is available to members of the public such as employers, landlords, neighbors, etc. The registry often contained many low-level offenders and offenders convicted decades ago who now present little to no community risk. The purpose of SB 384 is to greatly reduce the number of people on California's registry, thereby restoring its effectiveness as a law-enforcement tool by removing from the registry tens of thousands of registrants that research has shown are now at low risk of reoffending.

3. Under Penal Code section 290.5, all current and future registered sex offenders would be placed into a "three-tier" system.

    a. Tier 1 - Registration for 10 years for misdemeanors or non-violent felonies.

    b. Tier 2 - Registration for 20 years for serious or violent felonies.

    c. Tier 3 - Registration for life for high-risk offenders, including, but not limited to, sexually violent offenders, repeat violent offenders, and sex offenses requiring life terms, except for offenders designated Tier 3 based only on a risk-level assessment, then registration for 20 years.

4. Under Penal Code section 290.5(a)(2), registrants shall file petitions with law enforcement agencies, as well as with the district attorney's (DA) office. Penal Code section 290.5(a)(1)(2) and (3) creates a post-conviction process whereby a Tier 1, Tier 2, and certain Tier 3 individuals may petition to be removed from the sex offender registry at the end of their designated registration period.

5. This removal process begins when a registrant contacts the PD's office, usually after receiving a California Department of Justice (DOJ) letter when registering at a police station. The DOJ website refers individuals to their local public defender's office or a private attorney for information on how to file a petition under Penal Code section 290.5. (see Attachment A at page 8)

6. Our department has assigned paralegals to conduct the initial intake process, which includes the initial interview and gathering of records. This process may take 4-6 hours. The case is then assigned to one of the lawyers in the Post-Conviction Unit, who will review the gathered records, conduct the necessary research, assess the person's eligibility, contact the petitioner, and then prepare a petition for filing if the petitioner is eligible. Simple cases may require a few hours; however, there may be complex issues involving out-of-state sex offenses with statutes that do not necessarily correspond to the CA Penal Code. There may also be a need to litigate in what Tier a person should be placed.

7. Once it is decided that a petition should be filed, an attorney from the PD completes and signs the necessary forms. A paralegal then serves copies of the petition on the court, the registering agency, and the Los Angeles County DA's Office in accordance with Penal Code section 290.5(a)(2). The law enforcement agency and the district attorney of the county of conviction of the registerable offense are also served if different from the county where the petition is filed.

8. Upon receipt of the petition, the registering agency (and the law enforcement agency of the county of conviction of the registerable offense, if different from the county where the petition is filed) would be required within 60 days to provide a report to the DA's Office and the superior court where the petition is filed regarding whether the person has met the requirements of termination in accordance with Penal Code section 290.5(a)(2).

9. The DA's Office may request a hearing under Penal Code section 290.5(a)(3) if the petitioner has either not met the requirements for termination or if community safety would be significantly enhanced by the person's continued registration. At the hearing, a judge can consider the following: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of offense; criminal and non-criminal behavior before and after the conviction for the registerable offense; the time period during which the person has not reoffended; successful treatment of a sex offender treatment program and the person's risk of sexual or violent re-offense, including risk levels based on risk assessment tools; or any other evidence submitted by the parties, which is reliable, material and relevant.

10. Since Penal Code section 290.5(a)(3) mandates that the district attorney shall be entitled to present evidence, a lawyer from the PD's Post-Conviction Unit is assigned to represent the petitioner at the hearing in order to afford the petitioner due process.

11. To prepare for the Penal Code section 290.5 hearing, a public defender must perform activities that include, but are not limited to, the following:

    (a) Conduct several interviews with the client to gather information about the

presence of empirically supported protective factors in the client's lifestyle to demonstrate that the client is low-risk for re-offending;

(b) Draft a defense motion with points and authorities and gather exhibits in support of the motion.

(c) Appoint a defense expert to conduct a risk assessment (when appropriate)

(d) Prepare to litigate standard of proof at the Penal Code section 290.5 hearing, since this is an unsettled area in the law.

(e) Follow up with the DOJ to verify that the client's name was removed from the sex offender registry, could take 1-3 months.

12. The legislatively created post-conviction process in Penal Code section 290.5 would violate due process if a lawyer were not provided in this legal, evidentiary, and adversarial proceeding. In order to properly represent someone at this hearing, our lawyer would require the assistance of paralegals, social workers, investigators and expert witnesses; they would investigate and present any other relevant evidence that may show that community safety would not be significantly enhanced by continued registration. A petitioner must be represented at this hearing by an attorney who understands the law, court process, and rules of evidence. The number of hours spent preparing and attending this hearing will vary depending on the complexity of the case.

13. The Post-Conviction Unit is comprised of one Deputy-In-Charge, 20 attorneys, 16 paralegals, and two secretarial assistants. Those working on Penal Code section 290.5 cases have completed a two-hour training on how to handle Penal Code section 290.5 cases and have been instructed to time code their work so that costs can be calculated.

14. All matters related to the mandate in Penal Code section 290.5 were handled by one lawyer in the PD's Office beginning on July 1, 2021, when individuals were first allowed to file their petitions. This attorney did not track the time he spent on Penal Code section 290.5 cases and costs cannot be calculated from July 2021 to January 2022. Beginning in February 2022, the Post-Conviction Unit was assigned to handle Penal Code section 290.5 matters and costs were subsequently tracked.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 7th day of September 2022 in Los Angeles, CA

Debra Werbel
Head Deputy, Post-Conviction Unit
Office of the Los Angeles County Public Defender

CALIFORNIA DEPARTMENT OF JUSTICE
CALIFORNIA JUSTICE INFORMATION SERVICES
SEX OFFENDER REGISTRY

CSOR

Frequently Asked Questions
California Tiered Sex Offender Registration (Senate Bill 384)
For Registrants

The California Department of Justice (CA DOJ) Sex Offender Registry has developed the following frequently asked questions in reference to Senate Bill (SB) 384. The information provided below is general information and is not intended as legal advice.

NOTE: The CA DOJ cannot provide legal advice.

What is SB 384?

Effective January 1, 2021, SB 384 transitioned California's lifetime sex offender registration schema to a tier-based schema. SB 384 established three tiers of registration for adult registrants for periods of 10 years, 20 years, and life, and two tiers of registration for juvenile registrants for periods of 5 years and 10 years. SB 384 allows the registrant to petition the superior court or juvenile court for termination of their sex offender registration requirement on or after their next birthday after July 1, 2021, following the expiration of their mandated minimum registration period. Based on criteria listed in SB 384, the court will either grant or deny the petition.

IMPORTANT DATES

Beginning on January 1, 2021, the CA DOJ designates tiers for registrants.

Beginning on July 1, 2021, on or after their next birthday after July 1, 2021, registrants who meet the mandated minimum requirements may petition for termination of their sex offender registration requirement in the superior court or juvenile court in the county in which they reside.

Beginning on January 1, 2022, registrants will be displayed on the Megan's Law website pursuant to Penal Code section 290.46 as amended under SB 384.

When did SB 384 take effect?

The tier-based sex offender registration schema took effect on January 1, 2021.

Pursuant to Penal Code section 290.5(a)(1) as amended under SB 118 and SB 384, tier one, tier two, and "Tier Three – Risk Assessment Level" registrants may file a petition in the superior court or juvenile court in their county of residence for termination of their California sex offender registration requirement. Registrants may petition the court following the expiration of their mandated minimum registration period on or after their next

birthday after July 1, 2021. Beginning January 1, 2022, the CA DOJ will make information available to the public via the Megan's Law website in accordance with SB 384.

The previous lifetime sex offender registration schema ended December 31, 2020.

Tiering

How are the tiers determined?

Tiers are designated in accordance with the criteria specified in Penal Code sections 290 through 290.024, et seq., the Sex Offender Registration Act, which include registrable conviction(s) or adjudication(s) from California and non-California jurisdictions, risk assessment scores and levels, and other criteria.

What are the mandatory minimum registration periods for individuals who were convicted of their registrable offenses in superior court?

Tier One: 10 years
Tier Two: 20 years
Tier Three – Risk Assessment Level: 20 years*
Tier Three: Lifetime

*Please refer to Penal Code section 290.5(b)(3) as amended under SB 384 for additional information

What are the mandatory minimum registration periods for individuals who were adjudicated of their registrable offenses in juvenile court?

Tier One: 5 years
Tier Two: 10 years

What is considered when determining whether I have met my mandatory minimum registration period?

Pursuant to Penal Code section 290(e), "the minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under the Sex Offender Registration Act (the Act), and by three years for each felony conviction of failing to register under the Act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to

terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions."

Who determines my tier designation?

The CA DOJ designates the tiers of most sex offender registrants. However, pursuant to Penal Code section 290.006, on and after January 1, 2021, the court shall determine the tier designations for individuals ordered by the court to register. Registrants who are court-ordered to register will be designated as tier one unless the court finds the person should register as a tier two or tier three registrant and states on the record the reasons for its finding. An individual is court-ordered to register pursuant to Penal Code section 290.006 when an individual is convicted of an offense, is not required to register pursuant to Penal Code section 290, and the court makes a finding that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification.

Will I be notified of my tier designation?

Registrants may request their local registering agencies to provide them with their tier notification letters.

What if I disagree with my tier designation?

Registrants who feel they have been designated as the wrong tier as specified in the Act as amended under SB 384 should consult with a public defender's office or a private attorney.

What tier will I be in if I have a registrable non-California sex offense conviction (out-of-state, federal, military)?

Pursuant to Penal Code section 290(d)(4), "[a] person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c). If the person's requirement to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two registrant, except that the person is subject to registration as a tier three registrant if one of the following applies:

(i) The person's risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.

(iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code."

Will a risk assessment score affect my tier? What if I have never been scored on a risk assessment tool?

Pursuant to Penal Code section 290(d)(3)(D), a registrant who, based on their registrable offense(s) is otherwise a tier one or tier two offender, is a tier three offender if a registrant's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument. Such individuals are designated as "Tier Three – Risk Assessment Level" by the CA DOJ. Individuals who are otherwise tier three are designated as "Tier Three – Lifetime" by the CA DOJ.

Pursuant to Penal Code section 290.5(b)(3) as amended under SB 384, a registrant required to register as a tier three offender based solely on the person's risk level may petition the court for termination from the registry after 20 years from release from custody on the registrable offense if the individual meets additional certain criteria, as outlined in Penal Code section 290.5(b)(3) as amended under SB 384.

A score on a risk assessment tool is not required in order to be tiered by CA DOJ or for an individual to be eligible to petition.

If I was convicted in another state/jurisdiction and I am not required to register as a sex offender in that jurisdiction (out-of-state, federal, military), am I still required to register in California?

If a registrant has a non-California conviction for which they are no longer required to register in the state of conviction, they may still be required to register in California. Pursuant to Penal Code section 290(d)(4), if the CA DOJ determines that the individual's non-California conviction is equivalent to a registrable offense listed in Penal Code section 290(c), they are required to meet the mandatory minimum registration requirements for the applicable tier for that offense before petitioning for termination from the requirement to register as a sex offender in California.

What if the CA DOJ is unable to immediately determine my tier?

Pursuant to Penal Code section 290(d)(5), a registrant is placed in a tier-to-be-determined category if their appropriate tier designation cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which they register towards their mandated minimum registration period.

The CA DOJ shall ascertain an individual's appropriate tier designation within 24 months of their placement in the tier-to-be-determined category.

If my requirement to register as a sex offender in California is terminated and I subsequently move out of the state, am I required to register in my new state of residence?

Each state/jurisdiction has their own sex offender registration requirements; therefore, the CA DOJ cannot confirm a registrant's requirement to register as a sex offender in another state/jurisdiction. Registrants should contact the sex offender registry of the appropriate state/jurisdiction for additional information about registration requirements in that state/jurisdiction.

If I believe I already meet the mandatory minimum registration requirements as included in SB 384, do I still need to register?

Yes. Registrants must continue to register as sex offenders in accordance with the Act. After July 1, 2021, on or after their next birthday following the expiration of the minimum mandated registration period, specified registrants may petition the courts for termination of the requirement to register as a sex offender in accordance with SB 384.

However, registrants are required to continue registering in accordance with the Act unless and until a court grants a petition for termination of sex offender registration requirements in California.

Failure to continue registering in accordance with the Act may make you subject to prosecution for failure to register.

Megan's Law Website

When will I be posted on the Megan's Law website pursuant to SB 384?

Beginning January 1, 2022, the Megan's Law website will reflect changes pursuant to SB 384. These changes include the elimination of certain exclusion criteria.

Who will be posted on the website?

Not all registrants will be posted on the public website. Penal Code section 290.46 as amended under SB 384 provides the criteria for individuals to be posted to the Megan's Law website.

Will the exclusion criteria change for removal from the Megan's Law website?

Yes. Pursuant to Penal Code section 290.46(d) as amended under SB 384, only registrants who meet the following requirements will be eligible to apply for exclusion on or after January 1, 2022.

"(i) An offense for which the registrant successfully completed probation, provided that the registrant submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the registrant was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the registrant by the penis of the other or by any foreign object.

(ii) An offense for which the registrant is on probation at the time of his or her application, provided that the registrant submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the registrant was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the registrant by the penis of the other or by any foreign object.

If, subsequent to his or her application, the registrant commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion from the Internet Web site shall be terminated."

If I am currently excluded from the Megan's Law website will I remain excluded?

Pursuant to amendments to Penal Code section 290.46 resulting from SB 384, registrants who were previously granted exclusion may no longer be eligible for exclusion. If the CA DOJ determines that a person who was granted an exclusion under a former version of Penal Code section 290.46(e) would not qualify for exclusion under Penal Code section 290.46(d) as amended under SB 384, the CA DOJ shall rescind the exclusion, make a reasonable effort to provide notification to registrant that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the registrant available to the public on the Megan's Law website as provided in Penal Code section 290.46(d) as amended under SB 384.

Will my tier designation be posted on the Megan's Law website?

No, your tier designation will not be posted on the Megan's Law website.

Petition for Termination of Sex Offender Registration Requirement
(Pen. Code § 290.5 as amended under SB 384)

When and where do I petition for termination of my sex offender registration requirement in California?

On or after July 1, 2021, on or after their next birthday following the expiration of their mandated minimum registration period, registrants who meet the mandated minimum requirements may petition the superior court or juvenile court in the county in which they reside.

The CA DOJ cannot provide legal assistance. If assistance is required, a registrant may contact a local public defender's office or a private attorney.

An individual who is registering solely for a juvenile adjudication will petition the juvenile court. An individual registering for an adult conviction of a sex offense, even if that person also registers for a juvenile adjudication, will petition the superior court.

Registrants must initiate the petition process by completing the petition forms, requesting proof of current registration from their individual registering law enforcement agencies, filing their petitions, and serving copies of their filed petitions on the required parties.

Where do I receive proof of current registration to attach to my petition?

The registrant's current registering law enforcement agency will provide the proof of current registration upon request from the registrant.

Where can I find the petition forms?

Please contact your local superior or juvenile court to request information about the petition forms.

On whom do I serve my petition?

The petition is required to be served on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency and the district attorney of the county of conviction of a registrable offense if different than the county where the petition is filed.

Who grants or denies a petition for termination?

The superior court or juvenile court where the registrant filed their petition will either grant or deny the petition for termination. For more information on the criteria used to grant or deny a petition, please refer to Penal Code section 290.5 as amended under SB 384.

Can the court deny a petition without holding a hearing?

Pursuant to Penal Code section 290.5(a)(3) as amended under SB 118, "The court may summarily deny a petition if the court determines the petitioner does not meet the statutory requirements for termination of sex offender registration or if the petitioner has not fulfilled the filing and service requirements of this section. In summarily denying a petition the court shall state the reason or reasons the petition is being denied."

What would make me automatically ineligible to petition?

Please find below a list of some scenarios that make you automatically ineligible to petition pursuant to SB 384. Please note that the below list does not include all the reasons you may be found automatically ineligible to petition.

- You have not met your minimum mandatory registration period pursuant to Penal Code section 290(e)
- There are pending charges against you which could extend the time to complete your tier or change your tier
- You are in custody
- You are on parole, probation, or supervised release
- You are a "Tier Three – Lifetime" registrant
- You have not fulfilled the filing and service requirements

Can a tier three registrant petition for termination of their sex offender registration requirement?

As addressed above, if a tier three registrant is designated as tier three solely due to their risk level, which was well above average risk (formerly high risk) on the static risk assessment tool for sex offenders, at least 20 years from release from custody on the registrant's registrable offense, the registrant may petition for termination of their sex offender registration requirement unless the conviction offense is listed in Penal Code sections 1192.7 or 288. The court shall determine, based on factors listed in Penal Code section 290.5 as amended under SB 384, whether community safety would be significantly enhanced by continued registration.

Individuals designated as tier three solely due to their risk level are designated as "Tier Three – Risk Assessment Level" by the CA DOJ.

If you are designated as "Tier Three – Lifetime", you may not petition for termination.

If my petition for termination is denied following a court hearing, when can I re-petition for termination?

Pursuant to Penal Code section 290.5 as amended under SB 384, the court shall set the time period after which the person can re-petition for termination for tier one and tier two registrants whose petitions for termination were denied following a hearing. The earliest re-petition date shall be at least one year from the date of the denial, but not more than five years, based on facts presented at the hearing. The court shall state on the record the reason for its determination setting the time period after which the person may re-petition.

As noted above, "Tier Three – Risk Assessment Level" registrants may petition the court for termination of sex offender registration requirements. If the petition is denied, the re-petition date shall be three to five years from the date of denial. (Pen. Code § 290.5(b)(3) as amended under SB 384).

What will I receive from the court if my petition is granted?

Registrants will receive notice from the court whether their petition is granted or denied. Registrants should retain the court order for their own records.

How long will it take after my petition for termination is granted by the court for my registration requirement to be terminated by the CA DOJ?

The CA DOJ anticipates full termination from the registry after a petition is granted to take between 30-90 days. Please retain a copy of the court order granting your petition until you receive a letter from CA DOJ indicating your registration requirement has been fully terminated. Your requirement to register as a sex offender in California ends at the time the court grants your petition.

Whom may I contact for more information regarding how to file a petition for termination of my sex offender registration requirement?

Registrants may contact the local public defender's office or a private attorney. The CA DOJ cannot provide legal advice.

California Department of Justice
Sex Offender Registry
SB384@doj.ca.gov

DECLARATION OF SUNG LEE

I, Sung Lee, declare under penalty of perjury under the laws of the State of California that the following is true and correct based on my personal knowledge, information, and belief:

1. I am employed by the County of Los Angeles (County) Public Defender's Office and hold the title of Departmental Finance Manager II. I am responsible for oversight and management of the Fiscal/Budget Services division, including the complete and timely recovery of costs related to services mandated by the State.

2. Senate Bill (SB) 384 added Penal Code section 290.5 and mandates a new program aimed at removing certain qualified registrants from the sexual offender registry.

3. Penal Code section 290.5(a)(1) and (b)(1) states that persons who are required to register under Penal Code section 290 and who are Tier One, Tier Two or certain Tier 3 offenders may file a petition in the superior court for termination from the sex offender registry. The California Department of Justice website refers individuals to their local public defender's office for assistance in filing the petition. The Public Defender's Office has been incurring costs associated with the filing of these petitions.

4. Further, Penal Code section 290.5(a)(2) allows the district attorney's office to request a hearing with the court if they object to the termination of the registration requirement. Penal Code section 290.5(a)(3) states that the district attorney shall be entitled to present evidence at the hearing. Further, Penal Code section 290.5(a)(3) states that the court shall consider numerous factors in making their determination, including evidence derived from declarations, affidavits, and police reports submitted by the parties. Penal Code section 290.5(a)(3) creates a new hearing that results in registrants requiring the assistance of counsel. The public defender represents the petitioner to ensure the petitioner is afforded with due process. The Public Defender's Office has incurred costs associated with their representation of these individuals at these hearings.

5. The Post-Conviction Unit of the Public Defender's Office has been responsible for assisting individuals affected by the newly added program under Penal Code section 290.5. This Post-Conviction Unit has been instructed to time code their hours so that costs can be calculated.

6. I was advised by Head Deputy Debra Werbel to calculate the Public Defender's Office's costs associated with the implementation of the tiered sexual offender hearings under Penal Code section 290.5. Below is a chart reflecting my calculations:

FY 2021-22 SB 384 Cost Summary	Amount
2/1/2022 - 2/15/2022	$ 11,701.42
2/16/2022 - 2/28/2022	$ 11,672.19
3/1/2022 - 3/15/2022	$ 17,224.18
3/16/2022 - 3/31/2022	$ 11,863.63
4/1/2022 -4/15/2022	$ 17,490.34
4/16/2022 -4/30/2022	$ 20,105.60
Total	$ 90,057.36

7. The Public Defender's Office first incurred costs related to implementing the mandate in SB 384, which added Penal Code section 290.5, on February 1, 2022.

8. The Public Defender's Office has incurred $90,057.36 in Fiscal Year (FY) 2021-22 for their work related to Penal Code section 290.5.

9. The Public Defender's Office has not received any local, State, or federal funding to offset the increased direct and indirect costs associated with the representation of individuals subject to SB 384, which added Penal Code section 290.5.

10. Using the California Sex and Arson Registry (CSAR) report dated May 25, 2022, the Public Defender's Office estimates that there are 7,480 eligible petitioners in Los Angeles County. The PD reasonably estimates that these registrants may be eligible to petition over the next 20 years and that 1/20th of eligible petitioners (374) may petition in FY 2022-23. The hourly rate for a Deputy Public Defender III is $193.10. At this time, the Public Defender's Office estimates four hours of work for each petition, which comes to $772.40 per petition. Based on these figures, the Public Defender's Office estimates incurring costs of $288,878 for FY 2022-23.

11. For the statewide cost estimate of increased costs that local agencies will incur to implement the mandated activities, using the CSAR report dated May 25, 2022, the Public Defender's Office reasonably estimates that there are 48,535 eligible petitioners in the State. The PD estimates that 1/20th (2,427) of the 48,535 Tier 1, Tier 2 or certain Tier 3 sex offenders may petition each year. Using the aforementioned $772.40 cost per petition, the Public Defender's Office estimates an increased statewide cost of $1,874,615 in FY 2022-23.

12. The Public Defender's Office is not aware of any prior determinations by the Board of Control or the Commission on State Mandates related to this matter. The County is not aware of any legislatively-determined mandates related to SB 384.

I have personal knowledge of the foregoing facts and information presented in this Test Claim and, if so required, I could and would testify to the statements made herein.

Executed this 1st day of September 2022 in Los Angeles, California.

Sung Lee
Departmental Finance Manager II
Office of the Public Defender
County of Los Angeles

SECTION 7: SUPPORTING DOCUMENTS

COUNTY OF LOS ANGELES TEST CLAIM

SENATE BILL 384: SEX OFFENDERS: REGISTRATION: CRIMINAL OFFENDER RECORD INFORMATION SYSTEMS

STATE AND SENATE BILL

COMMITTEES AND RULES

CASELAW AND CODES

SB-384 Sex offenders: registration: criminal offender record information systems. (2017-2018)

Date Published: 10/06/2017 09:00 PM

Senate Bill No. 384

CHAPTER 541

An act to amend Sections 9002 and 13125 of, and to amend, repeal, and add Sections 290, 290.006, 290.008, 290.45, 290.46, 290.5, and 4852.03 of, the Penal Code, relating to sex offenders.

[Approved by Governor October 06, 2017. Filed with Secretary of State October 06, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 384, Wiener. Sex offenders: registration: criminal offender record information systems.

Existing law requires persons convicted of specified sex offenses and certain acts of human trafficking for purposes of committing various sex offenses or extortion, as specified, or attempts to commit those offenses, to register with local law enforcement agencies while residing in the state or while attending school or working in the state. Willful failure to register, as required, is a misdemeanor, or a felony, depending on the underlying offense.

Existing law requires the Department of Justice to make available to the public information concerning registered sex offenders on an Internet Web site, as specified. Existing law requires that information to include, among other things, whether the offender was subsequently incarcerated for another felony. Existing law also authorizes a person to file an application for exclusion from the Internet Web site and establishes the requirements for exclusion.

This bill would, commencing January 1, 2021, instead establish 3 tiers of registration based on specified criteria, for periods of at least 10 years, at least 20 years, and life, respectively, for a conviction of specified sex offenses, and 5 years and 10 years for tiers one and two, respectively, for an adjudication as a ward of the juvenile court for specified sex offenses, as specified. The bill would allow the Department of Justice to place a person in a tier-to-be-determined category for a maximum period of 24 months if his or her appropriate tier designation cannot be immediately ascertained. The bill would, commencing July 1, 2021, establish procedures for termination from the sex offender registry for a registered sex offender who is a tier one or tier two offender and who completes his or her mandated minimum registration period under specified conditions. The bill would require the offender to file a petition at the expiration of his or her minimum registration period and would authorize the district attorney to request a hearing on the petition if the petitioner has not fulfilled the requirement of successful tier completion, as specified. The bill would establish procedures for a person required to register as a tier three offender based solely on his or her risk level to petition the court for termination from the registry after 20 years from release of custody, if certain criteria are met. The bill would also, commencing January 1, 2022, revise the criteria for exclusion from the Internet Web site.

Existing law requires all basic information stored in state or local criminal offender record information systems to be recorded in the form of specified data elements, including the disposition of the offense.

This bill would require that information to include sentence enhancement data elements.

Existing law establishes the Sex Offender Management Board within the jurisdiction of the Department of Corrections and Rehabilitation. Existing law requires the board to address issues, concerns, and problems related to the community management of adult sex offenders.

This bill would instead require the board to address any issues, concerns, and problems related to the community management of all sex offenders.

This bill would incorporate additional changes to Section 290 of the Penal Code proposed by AB 484 to be operative as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 1.5. Section 290 of the Penal Code is amended to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence

within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

(d) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 2. Section 290 is added to the Penal Code, to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the period specified in subdivision (d) while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c) The following persons shall register:

Every person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10 years, 20 years, or life, following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1) (A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described in subdivision (c), or for conviction of a felony described in subdivision (c) that was not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) This paragraph does not apply to a person who is subject to registration pursuant to paragraph (2) or (3).

(2) (A) A tier two offender is subject to registration for a minimum of 20 years. A person is a tier two offender if the person was convicted of an offense described in subdivision (c) that is also described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, Section 285, subdivision (g) or (h)of Section 286, subdivision (g) or (h) of Section 288a, subdivision (b) of Section 289, or Section 647.6 if it is a second or subsequent conviction for that offense that was brought and tried separately.

(B) This paragraph does not apply if the person is subject to lifetime registration as required in paragraph (3).

(3) A tier three offender is subject to registration for life. A person is a tier three offender if any one of the following applies:

(A) Following conviction of a registerable offense, the person was subsequently convicted in a separate proceeding of committing an offense described in subdivision (c) and the conviction is for commission of a violent felony described in subdivision (c) of Section 667.5, or the person was subsequently convicted of committing an offense for which the person was ordered to register pursuant to Section 290.006, and the conviction is for the commission of a violent felony described in subdivision (c) of Section 667.5.

(B) The person was committed to a state mental hospital as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(C) The person was convicted of violating any of the following:

(i) Section 187 while attempting to commit or committing an act punishable under Section 261, 286, 288, 288a, or 289.

(ii) Section 207 or 209 with intent to violate Section 261, 286, 288, 288a, or 289.

(iii) Section 220.

(iv) Subdivision (b) of Section 266h.

(v) Subdivision (b) of Section 266i.

(vi) Section 266j.

(vii) Section 267.

(viii) Section 269.

(ix) Subdivision (b) or (c) of Section 288.

(x) Section 288.2.

(xi) Section 288.3, unless committed with the intent to commit a violation of subdivision (b) of Section 286, subdivision (b) of Section 288a, or subdivision (h) or (i) of Section 289.

(xii) Section 288.4.

(xiii) Section 288.5.

(xiv) Section 288.7.

(xv) Subdivision (c) of Section 653f.

(xvi) Any offense for which the person is sentenced to a life term pursuant to Section 667.61.

(D) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(E) The person is a habitual sex offender pursuant to Section 667.71.

(F) The person was convicted of violating subdivision (a) of Section 288 in two proceedings brought and tried separately.

(G) The person was sentenced to 15 to 25 years to life for an offense listed in Section 667.61.

(H) The person is required to register pursuant to Section 290.004.

(I) The person was convicted of a felony offense described in subdivision (b) or (c) of Section 236.1.

(J) The person was convicted of a felony offense described in subdivision (a), (c), or (d) of Section 243.4.

(K) The person was convicted of violating paragraph (2), (3), or (4) of subdivision (a) of Section 261 or was convicted of violating Section 261 and punished pursuant to paragraph (1) or (2) of subdivision (c) of Section 264.

(L) The person was convicted of violating paragraph (1) of subdivision (a) of Section 262.

(M) The person was convicted of violating Section 264.1.

(N) The person was convicted of any offense involving lewd or lascivious conduct under Section 272.

(O) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 286.

(P) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 288a.

(Q) The person was convicted of violating paragraph (1) of subdivision (a) or subdivision (d), (e), or (j) of Section 289.

(R) The person was convicted of a felony violation of Section 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, or 311.10.

(4) (A) A person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c).

(B) If the person's duty to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two offender, except that the person is subject to registration as a tier three offender if one of the following applies:

(i) The person's risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.

(iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(5) (A) The Department of Justice may place a person described in subdivision (c), or who is otherwise required to register pursuant to the Act, in a tier-to-be-determined category if his or her appropriate tier designation described in this subdivision cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which he or she registers towards his or her mandated minimum registration period.

(B) The Department of Justice shall ascertain an individual's appropriate tier designation as described in this subdivision within 24 months of his or her placement in the tier-to-be-determined category.

(e) The minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall

commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

(f) Nothing in this section shall be construed to require a ward of the juvenile court to register under the Act, except as provided in Section 290.008.

(g) This section shall become operative on January 1, 2021.

SEC. 2.5 Section 290 is added to the Penal Code, to read:

290. (a) Sections 290 to 290.024, inclusive, shall be known, and may be cited, as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the period specified in subdivision (d) while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall register thereafter in accordance with the Act, unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(c) The following persons shall register:

Every person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) or (c) of Section 236.1, Section 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the offenses described in this subdivision; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the offenses described in this subdivision.

(d) A person described in subdivision (c), or who is otherwise required to register pursuant to the Act shall register for 10 years, 20 years, or life, following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision, as follows:

(1) (A) A tier one offender is subject to registration for a minimum of 10 years. A person is a tier one offender if the person is required to register for conviction of a misdemeanor described in subdivision (c), or for conviction of a felony described in subdivision (c) that was not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) This paragraph does not apply to a person who is subject to registration pursuant to paragraph (2) or (3).

(2) (A) A tier two offender is subject to registration for a minimum of 20 years. A person is a tier two offender if the person was convicted of an offense described in subdivision (c) that is also described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section 286, subdivision (g) or (h) of Section 288a, subdivision (b) of Section 289, or Section 647.6 if it is a second or subsequent conviction for that offense that was brought and tried separately.

(B) This paragraph does not apply if the person is subject to lifetime registration as required in paragraph (3).

(3) A tier three offender is subject to registration for life. A person is a tier three offender if any one of the following applies:

(A) Following conviction of a registerable offense, the person was subsequently convicted in a separate proceeding of committing an offense described in subdivision (c) and the conviction is for commission of a violent felony described in subdivision (c) of Section 667.5, or the person was subsequently convicted of committing an offense for which the person was ordered to register pursuant to Section 290.006, and the conviction is for the commission of a violent felony described in subdivision (c) of Section 667.5.

(B) The person was committed to a state mental hospital as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(C) The person was convicted of violating any of the following:

(i) Section 187 while attempting to commit or committing an act punishable under Section 261, 286, 288, 288a, or 289.

(ii) Section 207 or 209 with intent to violate Section 261, 286, 288, 288a, or 289.

(iii) Section 220.

(iv) Subdivision (b) of Section 266h.

(v) Subdivision (b) of Section 266i.

(vi) Section 266j.

(vii) Section 267.

(viii) Section 269.

(ix) Subdivision (b) or (c) of Section 288.

(x) Section 288.2.

(xi) Section 288.3, unless committed with the intent to commit a violation of subdivision (b) of Section 286, subdivision (b) of Section 288a, or subdivision (h) or (i) of Section 289.

(xii) Section 288.4.

(xiii) Section 288.5.

(xiv) Section 288.7.

(xv) Subdivision (c) of Section 653f.

(xvi) Any offense for which the person is sentenced to a life term pursuant to Section 667.61.

(D) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO), pursuant to Section 290.04, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(E) The person is a habitual sex offender pursuant to Section 667.71.

(F) The person was convicted of violating subdivision (a) of Section 288 in two proceedings brought and tried separately.

(G) The person was sentenced to 15 to 25 years to life for an offense listed in Section 667.61.

(H) The person is required to register pursuant to Section 290.004.

(I) The person was convicted of a felony offense described in subdivision (b) or (c) of Section 236.1.

(J) The person was convicted of a felony offense described in subdivision (a), (c), or (d) of Section 243.4.

(K) The person was convicted of violating paragraph (2), (3), or (4) of subdivision (a) of Section 261 or was convicted of violating Section 261 and punished pursuant to paragraph (1) or (2) of subdivision (c) of Section 264.

(L) The person was convicted of violating paragraph (1) of subdivision (a) of Section 262.

(M) The person was convicted of violating Section 264.1.

(N) The person was convicted of any offense involving lewd or lascivious conduct under Section 272.

(O) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 286.

(P) The person was convicted of violating paragraph (2) of subdivision (c) or subdivision (d), (f), or (i) of Section 288a.

(Q) The person was convicted of violating paragraph (1) of subdivision (a) or subdivision (d), (e), or (j) of Section 289.

(R) The person was convicted of a felony violation of Section 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, or 311.10.

(4) (A) A person who is required to register pursuant to Section 290.005 shall be placed in the appropriate tier if the offense is assessed as equivalent to a California registerable offense described in subdivision (c).

(B) If the person's duty to register pursuant to Section 290.005 is based solely on the requirement of registration in another jurisdiction, and there is no equivalent California registerable offense, the person shall be subject to registration as a tier two offender, except that the person is subject to registration as a tier three offender if one of the following applies:

(i) The person's risk level on the static risk assessment instrument (SARATSO), pursuant to Section 290.06, is well above average risk at the time of release on the index sex offense into the community, as defined in the Coding Rules for that instrument.

(ii) The person was subsequently convicted in a separate proceeding of an offense substantially similar to an offense listed in subdivision (c) which is also substantially similar to an offense described in subdivision (c) of Section 667.5, or is substantially similar to Section 269 or 288.7.

(iii) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(5) (A) The Department of Justice may place a person described in subdivision (c), or who is otherwise required to register pursuant to the Act, in a tier-to-be-determined category if his or her appropriate tier designation described in this subdivision cannot be immediately ascertained. An individual placed in this tier-to-be-determined category shall continue to register in accordance with the Act. The individual shall be given credit for any period for which he or she registers towards his or her mandated minimum registration period.

(B) The Department of Justice shall ascertain an individual's appropriate tier designation as described in this subdivision within 24 months of his or her placement in the tier-to-be-determined category.

(e) The minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

(f) Nothing in this section shall be construed to require a ward of the juvenile court to register under the Act, except as provided in Section 290.008.

(g) This section shall become operative on January 1, 2021.

SEC. 3. Section 290.006 of the Penal Code is amended to read:

290.006. (a) Any person ordered by any court to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 4. Section 290.006 is added to the Penal Code, to read:

290.006. (a) Any person ordered by any court to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) The person shall register as a tier one offender in accordance with paragraph (1) of subdivision (d) of Section 290, unless the court finds the person should register as a tier two or tier three offender and states on the record the reasons for its finding.

(c) In determining whether to require the person to register as a tier two or tier three offender, the court shall consider all of the following:

(1) The nature of the registerable offense.

(2) The age and number of victims, and whether any victim was personally unknown to the person at the time of the offense. A victim is personally unknown to the person for purposes of this paragraph if the victim was known to the offender for less than 24 hours.

(3) The criminal and relevant noncriminal behavior of the person before and after conviction for the registerable offense.

(4) Whether the person has previously been arrested for, or convicted of, a sexually motivated offense.

(5) The person's current risk of sexual or violent reoffense, including the person's risk level on the SARATSO static risk assessment instrument, and, if available from past supervision for a sexual offense, the person's risk level on the SARATSO dynamic and violence risk assessment instruments.

(d) This section shall become operative on January 1, 2021.

SEC. 5. Section 290.008 of the Penal Code is amended to read:

290.008. (a) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act.

(b) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) shall register in accordance with the Act.

(c) Any person described in this section who committed an offense in violation of any of the following provisions shall be required to register pursuant to the Act:

(1) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(2) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(3) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(d) Prior to discharge or parole from the Department of Corrections and Rehabilitation, any person who is subject to registration under this section shall be informed of the duty to register under the procedures set forth in the Act. Department officials shall transmit the required forms and information to the Department of Justice.

(e) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This section shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(f) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 6. Section 290.008 is added to the Penal Code, to read:

290.008. (a) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.

(b) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) shall register in accordance with the Act.

(c) Any person described in this section who committed an offense in violation of any of the following provisions shall be required to register pursuant to the Act:

(1) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(2) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, or Section 647.6.

(3) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(d) (1) A tier one juvenile offender is subject to registration for a minimum of five years. A person is a tier one juvenile offender if the person is required to register after being adjudicated as a ward of the court and discharged or paroled from the Department of Corrections and Rehabilitation for an offense listed in subdivision (c) that is not a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(2) A tier two juvenile offender is subject to registration for a minimum of 10 years. A person is a tier two juvenile offender if the person is required to register after being adjudicated as a ward of the court and discharged or paroled from the Department of Corrections and Rehabilitation for an offense listed in subdivision (c) that is a serious or violent felony as described in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A person who is required to register as a sex offender pursuant to this section may file a petition for termination from the sex offender registry in the juvenile court in the county in which he or she is registered at the expiration of his or her mandated minimum registration period, pursuant to Section 290.5.

(e) Prior to discharge or parole from the Department of Corrections and Rehabilitation, any person who is subject to registration under this section shall be informed of the duty to register under the procedures set forth in the Act. Department officials shall transmit the required forms and information to the Department of Justice.

(f) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required

to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This section shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(g) This section shall become operative on January 1, 2021.

SEC. 7. Section 290.45 of the Penal Code is amended to read:

290.45. (a) (1) Notwithstanding any other law, and except as provided in paragraph (2), any designated law enforcement entity may provide information to the public about a person required to register as a sex offender pursuant to Section 290, by whatever means the entity deems appropriate, when necessary to ensure the public safety based upon information available to the entity concerning that specific person.

(2) The law enforcement entity shall include, with the disclosure, a statement that the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders.

(3) Community notification by way of an Internet Web site shall be governed by Section 290.46, and a designated law enforcement entity may not post on an Internet Web site any information identifying an individual as a person required to register as a sex offender except as provided in that section unless there is a warrant outstanding for that person's arrest.

(b) Information that may be provided pursuant to subdivision (a) may include, but is not limited to, the offender's name, known aliases, gender, race, physical description, photograph, date of birth, address, which shall be verified prior to publication, description and license plate number of the offender's vehicles or vehicles the offender is known to drive, type of victim targeted by the offender, relevant parole or probation conditions, crimes resulting in classification under this section, and date of release from confinement, but excluding information that would identify the victim. It shall not include any Internet identifier submitted pursuant to this chapter.

(c) (1) The designated law enforcement entity may authorize persons and entities who receive the information pursuant to this section to disclose information to additional persons only if the entity determines that disclosure to the additional persons will enhance the public safety and identifies the appropriate scope of further disclosure. A law enforcement entity may not authorize any disclosure of this information by placing that information on an Internet Web site, and shall not authorize disclosure of Internet identifiers submitted pursuant to this chapter, except as provided in subdivision (h).

(2) A person who receives information from a law enforcement entity pursuant to paragraph (1) may disclose that information only in the manner and to the extent authorized by the law enforcement entity.

(d) (1) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(2) A public or private educational institution, a day care facility, or a child care custodian described in Section 11165.7, or an employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to subdivision (c) shall be immune from civil liability.

(e) (1) A person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(2) A person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(f) For purposes of this section, "designated law enforcement entity" means the Department of Justice, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(g) The public notification provisions of this section are applicable to every person required to register pursuant to Section 290, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in Section 290, regardless of when it was committed.

(h) (1) Notwithstanding any other law, a designated law enforcement entity shall only use an Internet identifier submitted pursuant to this chapter, or release that Internet identifier to another law enforcement entity, for the purpose of investigating a sex-related crime, a kidnapping, or human trafficking.

(2) A designated law enforcement entity shall not disclose or authorize persons or entities to disclose an Internet identifier submitted pursuant to this chapter to the public or other persons, except as required by court order.

(i) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 8. Section 290.45 is added to the Penal Code, to read:

290.45. (a) (1) Notwithstanding any other law, and except as provided in paragraph (2), any designated law enforcement entity may provide information to the public about a person required to register as a sex offender pursuant to Section 290, by whatever means the entity deems appropriate, when necessary to ensure the public safety based upon information available to the entity concerning that specific person's current risk of sexual or violent reoffense, including, but not limited to, the person's static, dynamic, and violence risk levels on the SARATSO risk tools described in subdivision (f) of Section 290.04.

(2) The law enforcement entity shall include, with the disclosure, a statement that the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders.

(3) Community notification by way of an Internet Web site shall be governed by Section 290.46, and a designated law enforcement entity may not post on an Internet Web site any information identifying an individual as a person required to register as a sex offender except as provided in that section unless there is a warrant outstanding for that person's arrest.

(b) Information that may be provided pursuant to subdivision (a) may include, but is not limited to, the offender's name, known aliases, gender, race, physical description, photograph, date of birth, address, which shall be verified prior to publication, description and license plate number of the offender's vehicles or vehicles the offender is known to drive, type of victim targeted by the offender, relevant parole or probation conditions, crimes resulting in classification under this section, and date of release from confinement, but excluding information that would identify the victim. It shall not include any Internet identifier submitted pursuant to this chapter.

(c) (1) The designated law enforcement entity may authorize persons and entities who receive the information pursuant to this section to disclose information to additional persons only if the entity determines that disclosure to the additional persons will enhance the public safety and identifies the appropriate scope of further disclosure. A law enforcement entity may not authorize any disclosure of this information by placing that information on an Internet Web site, and shall not authorize disclosure of Internet identifiers submitted pursuant to this chapter, except as provided in subdivision (h).

(2) A person who receives information from a law enforcement entity pursuant to paragraph (1) may disclose that information only in the manner and to the extent authorized by the law enforcement entity.

(d) (1) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(2) A public or private educational institution, a day care facility, or a child care custodian described in Section 11165.7, or an employee of a public or private educational institution or day care facility which in good faith disseminates information as authorized pursuant to subdivision (c) shall be immune from civil liability.

(e) (1) A person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(2) A person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000).

(f) For purposes of this section, "designated law enforcement entity" means the Department of Justice, a district attorney, the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.

(g) The public notification provisions of this section are applicable to every person required to register pursuant to Section 290, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to each offense described in Section 290, regardless of when it was committed.

(h) (1) Notwithstanding any other law, a designated law enforcement entity shall only use an Internet identifier submitted pursuant to this chapter, or release that Internet identifier to another law enforcement entity, for the purpose of investigating a sex-related crime, a kidnapping, or human trafficking.

(2) A designated law enforcement entity shall not disclose or authorize persons or entities to disclose an Internet identifier submitted pursuant to this chapter to the public or other persons, except as required by court order.

(i) This section shall become operative on January 1, 2021.

SEC. 9. Section 290.46 of the Penal Code is amended to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivision (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The State Department of State Hospitals shall provide to the Department of Justice the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division

6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before January 1, 2013, the department shall make available to the public via the Internet Web site his or her static SARATSO score and information on an elevated risk level based on the SARATSO future violence tool.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289.

(B) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(D) Paragraph (2) or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 269.

(G) Subdivision (c) or (d) of Section 286.

(H) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(I) Subdivision (c) or (d) of Section 288a.

(J) Section 288.3, provided that the offense is a felony.

(K) Section 288.4, provided that the offense is a felony.

(L) Section 288.5.

(M) Subdivision (a) or (j) of Section 289.

(N) Section 288.7.

(O) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code.

(P) A felony violation of Section 311.1.

(Q) A felony violation of subdivision (b), (c), or (d) of Section 311.2.

(R) A felony violation of Section 311.3.

(S) A felony violation of subdivision (a), (b), or (c) of Section 311.4.

(T) Section 311.10.

(U) A felony violation of Section 311.11.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in subdivision (c) of Section 290, and, for those persons, the Department of Justice shall make

available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in subdivision (c) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(B) Section 266, provided that the offense is a felony.

(C) Section 266c, provided that the offense is a felony.

(D) Section 266j.

(E) Section 267.

(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 288.4, provided that the offense is a misdemeanor.

(I) Section 626.81.

(J) Section 647.6.

(K) Section 653c.

(L) Any person required to register pursuant to Section 290 based upon an out-of-state conviction, unless that person is excluded from the Internet Web site pursuant to subdivision (e). However, if the Department of Justice has determined that the out-of-state crime, if committed or attempted in this state, would have been punishable in this state as a crime described in subdivision (c) of Section 290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, if the offense is a misdemeanor.

(C) A felony violation of Section 311.1, subdivision (b), (c), or (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if the person submits to the department a certified copy of a probation report filed in court that clearly states that all victims involved in the commission of the offense were at least 16 years of age or older at the time of the commission of the offense.

(D) (i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(iii) If, subsequent to his or her application, the offender commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion, from the Internet Web site shall be terminated.

(iv) For the purposes of this subparagraph, "successfully completed probation" means that during the period of probation the offender neither received additional county jail or state prison time for a violation of probation nor was convicted of another offense resulting in a sentence to county jail or state prison.

(3) If the department determines that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department shall rescind the exclusion, make a reasonable effort to provide notification to the person that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

(4) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

(i) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(j) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars ($10,000) and not more than fifty thousand dollars ($50,000).

(2) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(k) Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(l) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(m) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(n) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(o) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available

information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Internet Web site, and any other resource that promotes public education about these offenders.

(p) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

SEC. 10. Section 290.46 is added to the Penal Code, to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivision (b), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The State Department of State Hospitals shall provide to the Department of Justice the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) With respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is otherwise described in, paragraph (2), or who is a tier three offender as described in paragraph (3) of subdivision (d) of Section 290, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a), except that information about persons required to register as a result of an adjudication as a ward of the juvenile court pursuant to Section 290.008 shall not be

made available on the Internet Web site. The department shall also make available to the public via the Internet Web site his or her static SARATSO risk level, if any, and information on an elevated risk level based on the SARATSO future violence tool. Any registrant whose information is listed on the public Internet Web site on January 1, 2022, by the Department of Justice pursuant to this subdivision, may continue to be included on the public Internet Web site while the registrant is placed in the tier-to-be-determined category described in paragraph (5) of subdivision (d) of Section 290.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289.

(B) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(D) Paragraph (2) or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 269.

(G) Subdivision (c) or (d) of Section 286.

(H) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(I) Subdivision (c) or (d) of Section 288a.

(J) Section 288.3, provided that the offense is a felony.

(K) Section 288.4, provided that the offense is a felony.

(L) Section 288.5.

(M) Subdivision (a) or (j) of Section 289.

(N) Section 288.7.

(O) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code.

(P) A felony violation of Section 311.1.

(Q) A felony violation of subdivision (b), (c), or (d) of Section 311.2.

(R) A felony violation of Section 311.3.

(S) A felony violation of subdivision (a), (b), or (c) of Section 311.4.

(T) Section 311.10.

(U) A felony violation of Section 311.11.

(V) A tier three offender, as described in paragraph (3) of subdivision (d) of Section 290.

(c) (1) With respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is otherwise described in, paragraph (2) of subdivision (d) of Section 290 and who is a tier two offender, and with respect to a person who has been convicted of the commission or the attempted commission of Section 647.6, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides, except that information about persons required to register as a result of an adjudication as a ward of the juvenile court pursuant to Section 290.008 shall not be made available on the Internet Web site. Any registrant whose information is listed on the public Internet Web site on January 1, 2022, by the Department of Justice

pursuant to this subdivision may continue to be included on the public Internet Web site while the registrant is placed in the tier-to-be-determined category described in paragraph (5) of subdivision (d) of Section 290.

(2) Any registrant whose information was not included on the public Internet Web site on January 1, 2022, and who is placed in the tier-to-be-determined category described in paragraph (5) of subdivision (d) of Section 290 may have the information described in this subdivision made available to the public via the public Internet Web site.

(d) (1) (A) An offender who is required to register pursuant to the Sex Offender Registration Act may apply for exclusion from the Internet Web site if he or she demonstrates that the person's only registerable offense is either of the following:

(i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(B) If, subsequent to his or her application, the offender commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion, or application for exclusion, from the Internet Web site shall be terminated.

(C) For the purposes of this paragraph, "successfully completed probation" means that during the period of probation the offender neither received additional county jail or state prison time for a violation of probation nor was convicted of another offense resulting in a sentence to county jail or state prison.

(2) If the department determines that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department shall rescind the exclusion, make a reasonable effort to provide notification to the person that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

(3) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of average, below average, or very low as determined by the Coding Rules for the SARATSO static risk assessment instrument.

(e) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2), provided that the information about that person is also displayed on the Department of Justice's Megan's Law Internet Web site.

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning the current risk posed by a specific offender, including his or her risk of sexual or violent reoffense, as indicated by the person's SARATSO static, dynamic, and violence risk levels, as described in Section 290.04, if available.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b).

(f) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

(g) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(h) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars ($10,000) and not more than fifty thousand dollars ($50,000).

(2) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment pursuant to subdivision (h) of Section 1170.

(i) Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(j) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

(H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3 of this code, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(k) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(l) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(m) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Internet Web site, and any other resource that promotes public education about these offenders.

(n) This section shall become operative on January 1, 2022.

SEC. 11. Section 290.5 of the Penal Code is amended to read:

290.5. (a) (1) A person required to register under Section 290 for an offense not listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of any further duty to register under Section 290 if he or she is not in custody, on parole, or on probation.

(2) A person required to register under Section 290, upon obtaining a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall not be relieved of the duty to register under Section 290, or of the duty to register under Section 290 for any offense subject to that section of which he or she is convicted in the future, if his or her conviction is for one of the following offenses:

(A) Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 220, except assault to commit mayhem.

(C) Section 243.4, provided that the offense is a felony.

(D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261.

(E) Section 264.1.

(F) Section 266, provided that the offense is a felony.

(G) Section 266c, provided that the offense is a felony.

(H) Section 266j.

(I) Section 267.

(J) Section 269.

(K) Paragraph (1) of subdivision (b) of Section 286, provided that the offense is a felony.

(L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 286.

(M) Section 288.

(N) Paragraph (1) of subdivision (b) of Section 288a, provided that the offense is a felony.

(O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d), (f), (g), (i), (j), or (k) of, Section 288a.

(P) Section 288.5.

(Q) Section 288.7.

(R) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289, provided that the offense is a felony.

(S) Subdivision (i) or (j) of Section 289.

(T) Section 647.6.

(U) The attempted commission of any of the offenses specified in this paragraph.

(V) The statutory predecessor of any of the offenses specified in this paragraph.

(W) Any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this paragraph.

(b) (1) Except as provided in paragraphs (2) and (3), a person described in paragraph (2) of subdivision (a) shall not be relieved of the duty to register until that person has obtained a full pardon as provided in Chapter 1 (commencing with Section 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

(2) This subdivision does not apply to misdemeanor violations of Section 647.6.

(3) The court, upon granting a petition for a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3, if the petition was granted prior to January 1, 1998, may relieve a person of the duty to register under Section 290 for a violation of Section 288 or 288.5, provided that the person was granted probation pursuant to subdivision (d) of Section 1203.066, has complied with the provisions of Section 290 for a continuous period of at least 10 years immediately preceding the filing of the petition, and has not been convicted of a felony during that period.

(c) This section shall remain in effect only until July 1, 2021, and as of that date is repealed.

SEC. 12. Section 290.5 is added to the Penal Code, to read:

290.5. (a) (1) A person who is required to register pursuant to Section 290 and who is a tier one or tier two offender may file a petition in the superior court in the county in which he or she is registered for termination from the sex offender registry at the expiration of his or her mandated minimum registration period, or if the person is required to register pursuant to Section 290.008, he or she may file the petition in juvenile court on or after his or her birthday following the expiration of the mandated minimum registration period. The petition shall contain proof of the person's current registration as a sex offender.

(2) The petition shall be served on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency and the district attorney of the county of conviction of a registerable offense if different than the county where the petition is filed. The registering law enforcement agency and the law enforcement agency of the county of conviction of a registerable offense if different than the county where the petition is filed shall, within 60 days of receipt of the petition, report to the district attorney and the superior or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination pursuant to subdivision (e) of Section 290. If an offense which may require registration pursuant to Section 290.005 is identified by the registering law enforcement agency which has not previously been assessed by the Department of Justice, the registering law enforcement agency shall refer that conviction to the department for assessment and determination of whether the conviction changes the tier designation assigned by the department to the offender. If the newly discovered offense changes the tier designation for that person, the department shall change the tier designation pursuant to subdivision (d) of Section 290 within three months of receipt of the request by the registering law enforcement agency and notify the registering law enforcement agency. If more time is required to obtain the documents needed to make the assessment, the department shall notify the registering law enforcement agency of the reason that an extension of time is necessary to complete the tier designation. The registering law enforcement agency shall report to the district attorney and the court that the department has requested an extension of time to determine the person's tier designation based on the newly discovered offense, the reason for the request, and the estimated time needed to complete the tier designation. The district attorney in the county where the petition is filed may, within 60 days of receipt of the report from either the registering law enforcement agency, the law enforcement agency of the county of conviction of a registerable offense if different than the county where the petition is filed, or the district attorney of the county of conviction of a registerable offense, request a hearing on the petition if the petitioner has not fulfilled the requirement described in subdivision (e) of Section 290, or if community safety would be significantly enhanced by the person's continued registration. If no hearing is requested, the petition for termination shall be granted if the court finds the required proof of current registration is presented in the petition, provided that the registering agency reported that the person met the requirement for termination pursuant to subdivision (e) of Section 290, there are no pending charges against the person which could extend the time to complete the registration requirements of the tier or change the person's tier status, and the person is not in custody or on parole, probation, or supervised release.

(3) If the district attorney requests a hearing, he or she shall be entitled to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration. In determining whether to order continued registration, the court shall consider: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for less than 24 hours); criminal and relevant noncriminal behavior before and after conviction for the registerable offense; the time period during which the person has not reoffended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and the person's current risk of sexual or

violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available. Any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is reliable, material, and relevant.

(4) If termination from the registry is denied, the court shall set the time period after which the person can repetition for termination, which shall be at least one year from the date of the denial, but not to exceed five years, based on facts presented at the hearing. The court shall state on the record the reason for its determination setting the time period after which the person may repetition.

(5) The court shall notify the Department of Justice, California Sex Offender Registry, when a petition for termination from the registry is granted or denied. If the petition is denied, the court shall also notify the Department of Justice, California Sex Offender Registry, of the time period after which the person can file a new petition for termination.

(b) (1) A person required to register as a tier two offender, pursuant to paragraph (2) of subdivision (d) of Section 290, may petition the superior court for termination from the registry after 10 years from release from custody on the registerable offense if all of the following apply: (A) the registerable offense involved no more than one victim 14 to 17 years of age, inclusive; (B) the offender was under 21 years of age at the time of the offense; (C) the registerable offense is not specified in subdivision (c) of Section 667.5, except subdivision (a) of Section 288; and (D) the registerable offense is not specified in Section 236.1.

(2) A tier two offender described in paragraph (1) of subdivision (b) may file a petition with the superior court for termination from the registry only if he or she has not been convicted of a new offense requiring sex offender registration or an offense described in subdivision (c) of Section 667.5 since the person was released from custody on the offense requiring registration pursuant to Section 290, and has registered for 10 years pursuant to subdivision (e) of Section 290. The court shall determine whether community safety would be significantly enhanced by requiring continued registration and may consider the following factors: whether the victim was a stranger (known less than 24 hours) at the time of the offense; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior before and after the conviction for the registerable offense; whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person's current risk of sexual or violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if known. If the petition is denied, the person may not repetition for termination for at least one year.

(3) A person required to register as a tier three offender based solely on his or her risk level, pursuant to subparagraph (D) of paragraph (3) of subdivision (d) of Section 290, may petition the court for termination from the registry after 20 years from release from custody on the registerable offense, if the person (A) has not been convicted of a new offense requiring sex offender registration or an offense described in subdivision (c) of Section 667.5 since the person was released from custody on the offense requiring registration pursuant to Section 290, and (B) has registered for 20 years pursuant to subdivision (e) of Section 290; except that a person required to register for a conviction pursuant to Section 288 or an offense listed in subdivision (c) of Section 1192.7 who is a tier three offender based on his or her risk level, pursuant to subparagraph (D) of paragraph (3) of subdivision (d) of Section 290, shall not be permitted to petition for removal from the registry. The court shall determine whether community safety would be significantly enhanced by requiring continued registration and may consider the following factors: whether the victim was a stranger (known less than 24 hours) at the time of the offense; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior before and after the conviction for the registerable offense; whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person's current risk of sexual or violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if known. If the petition is denied, the person may not re-petition for termination for at least three years.

(c) This section shall become operative on July 1, 2021.

SEC. 13. Section 4852.03 of the Penal Code is amended to read:

4852.03. (a) The period of rehabilitation commences upon the discharge of the petitioner from custody due to his or her completion of the term to which he or she was sentenced or upon his or her release on parole, postrelease community supervision, mandatory supervision, or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute five years' residence in this state, plus a period of time determined by the following rules:

(1) An additional four years in the case of a person convicted of violating Section 187, 209, 219, 4500, or 18755 of this code, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.

(2) An additional five years in the case of a person convicted of committing an offense or attempted offense for which sex offender registration is required pursuant to Section 290, except that in the case of a person convicted of a violation of subdivision (b), (c), or (d) of Section 311.2, or of Section 311.3, 311.10, or 314, an additional two years.

(3) An additional two years in the case of a person convicted of committing an offense that is not listed in paragraph (1) or paragraph (2) and that does not carry a life sentence.

(4) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that the statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes.

(b) Unless and until the period of rehabilitation required by subdivision (a) has passed, the petitioner shall be ineligible to file his or her petition for a certificate of rehabilitation with the court. A certificate of rehabilitation that is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

(c) A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.

(d) This section shall remain in effect only until July 1, 2021, and as of that date is repealed.

SEC. 14. Section 4852.03 is added to the Penal Code, to read:

4852.03. (a) The period of rehabilitation commences upon the discharge of the petitioner from custody due to his or her completion of the term to which he or she was sentenced or upon his or her release on parole, postrelease community supervision, mandatory supervision, or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute five years' residence in this state, plus a period of time determined by the following rules:

(1) An additional four years in the case of a person convicted of violating Section 187, 209, 219, 4500, or 18755 of this code, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.

(2) (A) An additional five years in the case of a person convicted of committing an offense or attempted offense for which sex offender registration is required pursuant to Sections 290 to 290.024, inclusive.

(B) A certificate of rehabilitation issued on or after July 1, 2021, does not relieve a person of the obligation to register as a sex offender unless the person obtains relief granted under Section 290.5.

(3) An additional two years in the case of a person convicted of committing an offense that is not listed in paragraph (1) or (2) and that does not carry a life sentence.

(4) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that the statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes.

(b) Unless and until the period of rehabilitation required by subdivision (a) has passed, the petitioner shall be ineligible to file his or her petition for a certificate of rehabilitation with the court. A certificate of rehabilitation that is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

(c) A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.

(d) This section shall become operative on July 1, 2021.

SEC. 15. Section 9002 of the Penal Code is amended to read:

9002. (a) The board shall address any issues, concerns, and problems related to the community management of sex offenders. The main objective of the board, which shall be used to guide the board in prioritizing resources and use of time, is to achieve safer communities by reducing victimization.

(b) The board shall conduct public hearings, as it deems necessary, to provide opportunities for gathering information and receiving input regarding the work of the board from concerned stakeholders and the public.

(c) The members of the board shall be immune from liability for good faith conduct under this chapter.

SEC. 16. Section 13125 of the Penal Code is amended to read:

13125. All basic information stored in state or local criminal offender record information systems shall be recorded, when applicable and available, in the form of the following standard data elements:

The following personal identification data:

Name—(full name)

Aliases

Monikers

Race

Sex

Date of birth

Place of birth (state or country)

Height

Weight

Hair color

Eye color

CII number

FBI number

Social security number

California operator's license number

Fingerprint classification number

Henry

NCIC

Address

The following arrest data:

Arresting agency

Booking number

Date of arrest

Offenses charged

Statute citations

Literal descriptions

Police disposition

Released

Cited and released

Turned over to

Complaint filed

The following misdemeanor or infraction data or preliminary hearing data:

County and court name

Date complaint filed

Original offenses charged in a complaint or citation

Held to answer

Certified plea

Disposition

Not convicted

Dismissed

Acquitted

Court trial

Jury trial

Convicted

Plea

Court trial

Jury trial

Date of disposition

Convicted offenses

Sentence

Sentence enhancement data elements

Proceedings suspended

Reason suspended

The following superior court data:

County

Date complaint filed

Type of proceeding

Indictment

Information

Certification

Original offenses charged in indictment or information

Disposition

Not convicted

Dismissed

Acquitted

Court trial

Jury trial

On transcript

Convicted—felony, misdemeanor

Plea

Court trial

Jury trial

On transcript

Date of disposition

Convicted offenses

Sentence

Sentence enhancement data elements

Proceedings suspended

Reason suspended

Source of reopened cases

The following corrections data:

Adult probation

County

Type of court

Court number

Offense

Date on probation

Date removed

Reason for removal

Jail (unsentenced prisoners only)

Offenses charged

Name of jail or institution

Date received

Date released

Reason for release

Bail on own recognizance

Bail

Other

Committing agency

County jail (sentenced prisoners only)

Name of jail, camp, or other

Convicted offense

Sentence

Sentence enhancement data elements

Date received

Date released

Reason for release

Committing agency

Division of Juvenile Justice

County

Type of court

Court number

Division of Juvenile Justice number

Date received

Convicted offense

Type of receipt

Original commitment

Parole violator

Date released

Type of release

Custody

Supervision

Date terminated

Department of Corrections and Rehabilitation

County

Type of court

Court number

Department of Corrections and Rehabilitation number

Date received

Convicted offense

Type of receipt

Original commitment

Parole violator

Date released

Type of release

Custody

Supervision

Date terminated

Mentally disordered sex offenders

County

Hospital number

Date received

Date discharged

Recommendation

SEC. 17. (a) (1) Section 1.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and Assembly Bill 484. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after Assembly Bill 484, in which case Section 1 of this bill shall not become operative.

(b) Section 2.5 of this bill incorporates changes made to Section 290 of the Penal Code proposed by both this bill and Assembly Bill 484. That section of this bill shall only become operative if (1) both bills are enacted, without regard to the order of enactment, and become effective on or before January 1, 2018, (2) each bill amends Section 290 of the Penal Code, (3) and this bill adds Section 290 to the Penal Code, in which case Section 2 of this bill shall not become operative.

190 Cal.App.3d 521 (1987)
234 Cal. Rptr. 795

CARMEL VALLEY FIRE PROTECTION DISTRICT et al., Plaintiffs and Respondents,

v.

THE STATE OF CALIFORNIA et al., Defendants and Appellants. RINCON DEL DIABLO MUNICIPAL WATER DISTRICT et al., Plaintiffs and Respondents,

v.

THE STATE OF CALIFORNIA et al., Defendants and Appellants. COUNTY OF LOS ANGELES, Plaintiff and Respondent,

v.

THE STATE OF CALIFORNIA et al., Defendants and Appellants.

Docket Nos. B006078, B011941, B011942.

Court of Appeals of California, Second District, Division Five.

February 19, 1987.

529 *529 COUNSEL

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Marilyn K. Mayer and Carol Hunter, Deputy Attorneys General, for Defendants and Appellants.

De Witt Clinton, County Counsel, Amanda F. Susskind, Deputy County Counsel, Ross & Scott, William D. Ross and Diana P. Scott, for Plaintiffs and Respondents.

OPINION

EAGLESON, J.

These consolidated appeals arise from three separate trial court proceedings concerning the heretofore unsuccessful efforts of various local agencies to secure reimbursement of state-mandated costs.

Case No. 2d Civ. B006078 (Carmel Valley et al. case) was the first matter decided by the trial court. The memorandum of decision in that case was judicially noticed by the trial court which heard the consolidated matters in 2d Civ. B011941 (Rincon et al. case) and 2d Civ. B011942 (County of Los Angeles case). Issues common to all three cases will be discussed
530 together *530 under the County of Los Angeles appeal, while issues unique to the other two appeals will be considered separately.

We identify the parties to the various proceedings in footnote 1.[1] For literary convenience, however, we will refer to all appellants as the State and all respondents as the County unless otherwise indicated.

APPEAL IN CASE NO. 2 CIVIL B011942

(County of Los Angeles Case)

FACTS AND PROCEDURAL HISTORY

County employs fire fighters for whom it purchased protective clothing and equipment, as required by title 8, California Administrative Code, sections 3401-3409, enacted in 1978 (executive orders). County argues that it is entitled to State reimbursement for these expenditures because they constitute a state-mandated "new program" or "higher level of service."

531 County relies on Revenue and Taxation Code section 2207[2] and former *531 section 2231,[3] and California Constitution, article XIII B, section 6[4] to support its claim.

County filed a test claim with the State Board of Control (Board) for these costs incurred during fiscal years 1978-1979 and 1979-1980.[5] After hearings were held on the matter, the Board determined on November 20, 1979, that there was a state mandate and that County should be reimbursed. State did not seek judicial review of this quasi-judicial decision of the Board.

Thereafter, a local government claims bill, Senate Bill Number 1261 (Stats. 1981, ch. 1090, p. 4191) (S.B. 1261) was introduced to provide appropriations to pay some of County's claims for these state-mandated costs. This bill was amended by the Legislature to delete all appropriations for the payment of these claims. Other claims of County not provided for in S.B. 1261 were contained in another local government claims bill, Assembly Bill Number 171 (Stats. 1982, ch. 28, p. 51) (A.B. 171). The appropriations in this bill were deleted by the Governor. Both pieces of legislation, sans appropriations, were enacted into law.[6]

On September 21, 1984, following these legislative rebuffs, County sought reimbursement by filing a petition for writ of mandate (Code Civ. Proc., § 1085) and complaint for declaratory relief. After appropriate responses were filed and a hearing was held, the court executed a judgment on February 6, 1985, granting a peremptory writ of mandate. A writ of
532 mandate was issued and other findings and orders made. It is from this judgment of *532 February 6, 1985, that State appeals. The relevant portions of the judgment are set forth verbatim below.[7]

533 *533 **CONTENTIONS**

State advances two basic contentions. It first asserts that the costs incurred by County are not state mandated because they are not the result of a "new program," and do not provide a "higher level of service." Either or both of these requirements are the sine qua non of reimbursement. Second, assuming a "new program" or "higher level of service" exists, portions of the trial court order aimed at assisting the reimbursement process were made in excess of the court's jurisdiction.

These contentions are without merit. We modify and affirm all three judgments.

DISCUSSION

I

ISSUE OF STATE MANDATE

The threshold question is whether County's expenditures are state mandated. The right to reimbursement is triggered when the local agency incurs "costs mandated by the state" in either complying with a "new program" or providing "an increased level of service of an existing program."[8] State advances many theories as to why the Board erred in concluding that these expenditures are state-mandated costs. One of these arguments is whether the executive orders are a "new program" as that phrase has been recently defined by our Supreme Court in *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46 [233 Cal. Rptr. 38, 729 P.2d 202].

534 *534 As we shall explain, State has waived its right to challenge the Board's findings and is also collaterally estopped from doing so. Additionally, although State is not similarly precluded from raising issues presented by the *State of California* case, we conclude that the executive orders are a "new program" within the meaning of article XIII B, section 6.

A. *Waiver*

(1a) We initially conclude that State has waived its right to contest the Board's findings. (2) Waiver occurs where there is an existing right; actual or constructive knowledge of its existence; and either an actual intention to relinquish it, or conduct so

inconsistent with an intent to enforce the right as to induce a reasonable belief that it has been waived. (*Medico-Dental etc. Co.* v. *Horton & Converse* (1942) 21 Cal.2d 411, 432 [132 P.2d 457]; *Loughan* v. *Harger-Haldeman* (1960) 184 Cal. App.2d 495, 502-503 [7 Cal. Rptr. 581].) A right that is waived is lost forever. (*L.A. City Sch. Dist.* v. *Landier Inv. Co.* (1960) 177 Cal. App.2d 744, 752 [2 Cal. Rptr. 662].) The doctrine of waiver applies to rights and privileges afforded by statute. (*People* v. *Murphy* (1962) 207 Cal. App.2d 885, 888 [24 Cal. Rptr. 803].)

(1b) State now contends to be an aggrieved party and seeks to dispute the Board's findings. However, it failed to seek judicial review of that November 20, 1979 decision (Code Civ. Proc., § 1094.5) as authorized by former Revenue and Taxation Code section 2253.5. The three-year statute of limitations applicable to such review has long since passed. (*Green* v. *Obledo* (1981) 29 Cal.3d 126, 141, fn. 10 [172 Cal. Rptr. 206, 624 P.2d 256]; Code Civ. Proc., § 338, subd. 1.)

In addition, State, through its agents, acquiesced in the Board's findings by seeking an appropriation to satisfy the validated claims. (Former Rev. & Tax. Code, § 2255, subd. (a).) On September 30, 1981, S.B. 1261 became law. On February 12, 1982, A.B. 171 was enacted. Appropriations had been stripped from each bill. State did not then seek review of the Board determinations even though time remained before the three-year statutory period expired. This inaction is clearly inconsistent with any intent to contest the validity of the Board's decision and results in a waiver.

B. *Administrative Collateral Estoppel*

(3a) We next conclude that State is collaterally estopped from attacking the Board's findings. (4) Traditionally, collateral estoppel has been applied to bar relitigation of an issue decided in a prior court proceeding. In order for the doctrine to
535 apply, the issues in the two proceedings must *535 be the same, the prior proceeding must have resulted in a final judgment on the merits, and the same parties or their privies must be involved. (*People* v. *Sims* (1982) 32 Cal.3d 468, 484 [186 Cal. Rptr. 77, 651 P.2d 321].)

The doctrine was extended in *Sims* to apply to a final adjudication of an administrative agency of statutory creation so as to preclude relitigation of the same issues in a subsequent criminal case. Our Supreme Court held that collateral estoppel applies to such prior adjudications where three requirements are met: (1) the administrative agency acted in a judicial capacity; (2) it resolved disputed issues properly before it; and (3) all parties were provided with the opportunity to fully and fairly litigate their claims. (*Id.* at p. 479.) All of the elements of administrative collateral estoppel are present here.

(3b) The Board was created by the state Legislature to exercise quasi-judicial powers in adjudging the validity of claims against the State. (*County of Sacramento* v. *Loeb* (1984) 160 Cal. App.3d 446, 452 [206 Cal. Rptr. 626].) At the time of the hearings, the Board proceedings were the sole administrative remedy available to local agencies seeking reimbursement for state-mandated costs. (Former Rev. & Tax. Code, § 2250.) Board examiners had the power to administer oaths, examine witnesses, issue subpoenas, and receive evidence. (Gov. Code, § 13911.) The hearings were adversarial in nature and allowed for the presentation of evidence by the claimant, the Department of Finance, and any other affected agency. (Former Rev. & Tax. Code, § 2252.)

The record indicates that the state mandate issues in this case were fully litigated before the Board. A representative of the state Division of Occupational Safety and Health and the Department of Industrial Relations testified as to why County's costs were not state mandated. Representatives of the various claimant fire districts in turn offered testimony contradicting that view. The proceedings culminated in a verbatim transcript and a written statement of the basis for the Board's decision.

State complains, however, that some of the traditional elements of the collateral estoppel doctrine are missing. In particular, State argues that it was not a party to the Board hearings and was not in privity with those state agencies which did participate.

(5) "[T]he courts have held that the agents of the same government are in privity with each other, since they represent not their own rights but the right of the government. [Fn. omitted.]" (*Lerner* v. *Los Angeles City Board of Education* (1963) 59 Cal.2d 382, 398 [29 Cal. Rptr. 657, 380 P.2d 97].) (3c) As we stated in our introduction of the parties in this case, the party
536 *536 known as "State" is merely a shorthand reference to the various state agencies and officials named as defendants below. Each of these defendants is an agent of the State of California and had a mutual interest in the Board proceedings. They are thus in privity with those state agencies which did participate below (e.g., Occupational Safety and Health Division).

It is also clear that even though the question of whether a cost is state mandated is one of law (*City of Merced* v. *State of California* (1984) 153 Cal. App.3d 777, 781 [200 Cal. Rptr. 642]), subsequent litigation on that issue is foreclosed here. (6) A prior judgment on a question of law decided by a court is conclusive in a subsequent action between the same parties where both causes involved arose out of the same subject matter or transaction, and where holding the judgment to be conclusive will not result in an injustice. (*City of Los Angeles* v. *City of San Fernando* (1975) 14 Cal.3d 199, 230 [123 Cal. Rptr. 1, 537 P.2d 1250]; *Beverly Hills Nat. Bank* v. *Glynn* (1971) 16 Cal. App.3d 274, 286-287 [93 Cal. Rptr. 907]; Rest.2d Judgments, § 28, p. 273.)[9]

(3d) Here, the basic issues of state mandate and the amount of reimbursement arose out of County's required compliance with the executive orders. In either forum — Board or court — the claims and the evidentiary and legal determination of their validity would be considered in similar fashion.

Furthermore, a determination of conclusiveness would not work an injustice. As we have noted, the Board was statutorily created to consider the validity of the various claims now being litigated. Processing of reimbursement claims in this manner was the only administrative remedy available to County. If we were to grant State's request and review the Board's determination de novo, we would, in any event, adhere to the well-settled principle of affording "great weight" to "the contemporaneous administrative construction of the enactment by those charged with its enforcement...." (*Coca-Cola Co.* v. *State Bd. of Equalization* (1945) 25 Cal.2d 918, 921 [156 P.2d 1].)

There is no policy reason to limit the application of the collateral estoppel doctrine to successive court proceedings. In *City and County of San Francisco* v. *Ang* (1979) 97 Cal. App.3d 673, 679 [159 Cal. Rptr. 56], the doctrine was applied to bar relitigation in a subsequent civil proceeding of a zoning issue previously decided by a city board of permit appeals. We similarly hold that the questions of law decided by the Board are binding in all of the subsequent civil proceedings presented
537 here. State therefore is collaterally *537 estopped to raise the issues of state mandate and amount of reimbursement in this appeal.

C. *Executive Orders — A "New Program" Under Article XIII B, Section 6*

(7) The recent decision by our Supreme Court in *County of Los Angeles* v. *State of California, supra,* 43 Cal.3d at p. 49 presents a new issue not previously considered by the Board or the trial court. That question is whether the executive orders constitute the type of "program" that is subject to the constitutional imperative of subvention under article XIII B, section 6.[10] We conclude that they are.

In *State of California,* the Court concluded that the term "program" has two alternative meanings: "programs that carry out the governmental function of providing services 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." (*Id.* at p. 56, italics added.) Although only one of these findings is necessary to trigger reimbursement, both are present here.

(8) First, fire protection is a peculiarly governmental function. (*County of Sacramento* v. *Superior Court* (1972) 8 Cal.3d 479, 481 [105 Cal. Rptr. 374, 503 P.2d 1382].) "Police and fire protection are two of the most essential and basic functions of local government." (*Verreos* v. *City and County of San Francisco* (1976) 63 Cal. App.3d 86, 107 [133 Cal. Rptr. 649].) This classification is not weakened by State's assertion that there are private sector fire fighters who are also subject to the executive orders. Our record on this point is incomplete because the issue was not presented below. Nonetheless, we have no difficulty in concluding as a matter of judicial notice that the overwhelming number of fire fighters discharge a classical governmental function.[11]

538 *538 The second, and alternative, prong of the *State of California* definition is also satisfied. The executive orders manifest a state policy to provide updated equipment to all fire fighters. Indeed, compliance with the executive orders is compulsory. The requirements imposed on local governments are also unique because fire fighting is overwhelmingly engaged in by local agencies. Finally, the orders do not apply generally to all residents and entities in the State but only to those involved in fire fighting.

These facts are distinguishable from those presented in *State of California.* There, the court held that a state-mandated increase in workers' compensation benefits did not require state subvention because the costs incurred by local agencies were only an incidental impact of laws that applied generally to all state residents and entities (i.e., to all workers and all

governmental and nongovernmental employers). Governmental employers in that setting were indistinguishable from private employers who were obligated through insurance or direct payment to pay the statutory increases.

State of California only defined the scope of the word "program" as used in California Constitution, article XIII B, section 6. We apply the same interpretation to former Revenue and Taxation Code section 2231 even though the statute was enacted much earlier. The pertinent language in the statute is identical to that found in the constitutional provision and no reason has been advanced to suggest that it should be construed differently. In any event, a different interpretation must fall before a constitutional provision of similar import. (*County of Los Angeles* v. *Payne* (1937) 8 Cal.2d 563, 574 [66 P.2d 658].)

II

ISSUE OF WHETHER COURT ORDERS EXCEEDED ITS JURISDICTION

A. *The Court Has Not Ordered an Appropriation in Violation of the Separation of Powers Doctrine*

(9) State begins its general attack on the judgment by citing the long-standing principle that a court order which directly compels the Legislature to appropriate funds or to pay funds not yet appropriated violates the separation of powers doctrine. (Cal. Const., art. III, § 3; art. XVI, § 7; *Mandel* v. *Myers* (1981) 29 Cal.3d 531, 540 [174 Cal. Rptr. 841, 629 P.2d 935].)[12]
539 State *539 observes (and correctly so) that the relevant constitutional (art. XIII B, § 6) and statutory (Rev. & Tax. Code, § 2207 & former § 2231) provisions are not appropriations measures. (See *City of Sacramento* v. *California State Legislature* (1986) 187 Cal. App.3d 393, 398 [231 Cal. Rptr. 686].) Since State otherwise discerns no manifest legislative intent to appropriate funds to pay County's claims (*City & County of S.F.* v. *Kuchel* (1948) 32 Cal.2d 364, 366 [196 P.2d 545]), it concludes that the judgment unconstitutionally compels performance of a legislative act.

State further argues that the judiciary's ability to reach an existing agency-support appropriation (State Department of Industrial Relations) (fn. 7, ¶ 1, *ante*) has been approved in only two contexts. First, the court can order payment from an existing appropriation, the expenditure of which has been legislatively prohibited by an unconstitutional or unlawful restriction. (*Committee to Defend Reproductive Rights* v. *Cory* (1982) 132 Cal. App.3d 852, 856 [183 Cal. Rptr. 475].) Second, once an adjudication has finally determined the rights of the parties, the court may compel satisfaction of the judgment from a current unexpended, unencumbered appropriation which administrative agencies routinely have used for the purpose in question. (*Mandel* v. *Myers, supra,* 29 Cal.3d at p. 544.) State insists that these facts are not present here.

County rejoins that a writ of traditional mandate (Code Civ. Proc., § 1085) is the correct method of compelling State to perform a clear and present ministerial legal obligation. (*County of Sacramento* v. *Loeb, supra,* 160 Cal. App.3d at pp. 451-452.) The ministerial obligation here is contained in California Constitution, article XIII B, section 6 and in Revenue and Taxation Code section 2207 and former section 2231. These provisions require State to reimburse local agencies for state-mandated costs.

We reject State's general characterization of the judgment by noting that it only affects an existing appropriation. It declares (fn. 7, ¶ 1, *ante*) that only funds already "*appropriated* by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund" shall be spent for reimbursement of County's state-mandated costs. (Italics added.) There is absolutely no language purporting to require the Legislature to enact appropriations or perform any other act that might violate separation of powers principles. (10) By simply ordering the State Controller to draw warrants and directing the State Treasurer to pay on already appropriated funds (fn. 7, ¶ 2, *ante*), the judgment permissibly compels performance of a ministerial duty: "[O]nce funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the State Controller or
540 other similar official to make appropriate expenditures *540 from such funds. [Citations.]" (*Mandel* v. *Myers, supra,* 29 Cal.3d at p. 540.)

As we will discuss in further detail below, the subject funds (fn. 7, ¶ 1, *ante*) were saddled with an unconstitutional restriction (fn. 7, ¶ 7, *ante*). However, *Mandel* establishes that such a restriction does not necessarily infect the entire appropriation. There, the Legislature had improperly prohibited the use of budget funds to pay a court-ordered and administratively

approved attorney's fees award. The court reasoned that as long as appropriated funds were "reasonably available for the expenditures in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds." (*Id.* at p. 542.) The court went on to find that money in a general "operating expenses and equipment" fund was, by both the Budget Act's terms and prior administrative practice, reasonably available to pay the attorney's fees award.

Contrary to State's argument, *Mandel* does not require that past administrative practice support a judgment for reimbursement from an otherwise available appropriation. Although there was evidence of a prior administrative practice of paying counsel fees from funds in the "operating expenses and equipment" budget, this fact was not the main predicate of the court's holding. Rather, the decisive factor was that the budget item in question functioned as a "catchall" appropriation in which funds were still reasonably available to satisfy the State's adjudicated debt. (*Id.* at pp. 543-544.)

Another illustration of this principle is found in *Serrano* v. *Priest* (1982) 131 Cal. App.3d 188 [182 Cal. Rptr. 387]. Plaintiffs in that case secured a judgment against the State of California for $800,000 in attorney's fees. The judgment was not paid, and subsequent proceedings were brought against State to satisfy the judgment. The trial court directed the State Controller to pay the $800,000 award, plus interest, from funds appropriated by the Legislature for "operating expenses and equipment" of the Department of Education, Superintendent of Public Instruction and State Board of Education. (*Id.* at p. 192.) This court affirmed that order even though there was no evidence that the agencies involved had ever paid court-ordered attorney's fees from that portion of the budget. Relying on *Mandel,* we concluded that funds were reasonably available from appropriations enacted in the Budget Act in effect at the time of the court's order, as well as from similar appropriations in subsequent budget acts.

(11) State also incorrectly asserts that the appropriations affected by the court's order must specifically refer to the particular expenditure in question in order to be available. This notion was summarily dismissed in *Mandel* v. *Myers, supra,* 29 Cal.3d
541 at pp. 543-544. Likewise, in *Committee to Defend* *541 *Reproductive Rights* v. *Cory, supra,* 132 Cal. App.3d at pp. 857-858, the court decreed that payments for Medi-Cal abortions could properly be ordered from monies appropriated for other Medi-Cal services, even though this use had been specifically prohibited by the Legislature.

Applying these various principles here, we note that the judgment (fn. 7, ¶ 2, *ante*) identified funds in account numbers XXXX-XXX-XXX, XXXX-XXX-XXX, XXXX-XXX-XXX and XXXX-XXX-XXX as being available for reimbursement. Within these 1984-1985 account appropriations for the Department of Industrial Relations were monies for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers. The evidence clearly showed that the remaining balances on hand would cover the cost of reimbursement. Since it is conceded that the fire fighting protective clothing and equipment in this case was purchased to prevent deaths and injuries to fire fighters, these funds, although not specifically appropriated for the reimbursement in question, were generally related to the nature of costs incurred by County and are therefore reasonably available for reimbursement.

B. *Legislative Disclaimers, Findings and Budget Control Language Are No Defense to Reimbursement*

As a general defense against the order to reimburse, State insists that the Legislature has itself concluded that the claimed costs are not reimbursable. This determination took the combined form of disclaimers, findings and budget control language. State interprets this self-serving legislation, as well as the legislative and gubernatorial deletions, as forever sweeping away State's obligation to reimburse the state-mandated costs at issue. Consequently, any order that ignores these restrictions on payment would amount to a court-ordered appropriation. As we shall conclude, these efforts are merely transparent attempts to do indirectly that which cannot lawfully be done directly.

The seminal legislation that gave rise to the 1978 executive orders was enacted by Statutes 1973, chapter 993, and is labeled the California Occupational Safety and Health Act (Cal/OSHA). It is modeled after federal law and is designed to assure safe working conditions for all California workers. A legislative disclaimer appearing in section 106 of that bill reads: "No appropriation is made by this act ... for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on...." The stated reason for this decision not to appropriate was that the cost of implementing the act was "minimal on a statewide basis in relation to the effect on local tax rates." (Stats. 1973, ch. 993, § 106, p. 1954.)

542 *542 Again, in 1974, the Legislature stated: "Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section, nor shall there be an appropriation made by this act, because the Legislature finds that this act and any executive regulations or safety orders issued pursuant thereto merely implement federal law and regulations." (Stats. 1974, ch. 1284, § 106, p. 2787.) This statute amended section 106 of Statutes 1973, chapter 993, and was a post facto change in the stated legislative rationale for not providing reimbursement.

Presumably because of the large number of reimbursement claims being filed, the Legislature subsequently used budget control language to confirm that compliance with the executive orders should not trigger reimbursement. Some of this legislation was effective September 30, 1981, as part of a local agency and school district reimbursement bill. The control language provided that "[t]he Board of Control shall not accept, or submit to the Legislature, any more claims pursuant to ... Sections 3401 to 3409, inclusive, of Title 8 of the California Administrative Code." (Stats. 1981, ch. 1090, § 3, p. 4193.)[13]

Further control language was inserted in the 1981, 1983 and 1984 Budget Acts. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This language prohibits encumbering appropriations to reimburse costs incurred under the executive orders, except under certain limited circumstances.

(12a) State first challenges the trial court's finding that expenditures mandated by the executive orders were not the result of a federally mandated program (fn. 7, ¶ 8, *ante*), despite the legislative finding in Statutes 1974, chapter 1284, section 106. We agree with the court's decision that there was no federal mandate.

The significance of this no-federal-mandate finding is revealed by examining past changes in the statutory definition of state-mandated costs. As thoroughly discussed in *City of Sacramento* v. *State of California* (1984) 156 Cal. App.3d 182, 196-197 [203 Cal. Rptr. 258] disapproved on other grounds in *County of Los Angeles* v. *State of California, supra,* 43 Cal.3d at p. 58, fn. 10, the concept of federally mandated costs has provided local agencies with a financial escape valve ever since passage of the "Property Tax Relief Act of 1972." (Stats. 1972, ch. 1406, § 1, p. 2931.) That act limited local governments' power to levy property taxes, while requiring that they be reimbursed by the State for providing compulsory
543 increased levels of service or *543 new programs. However, under Revenue and Taxation Code section 2271, "costs mandated by the federal government" were not subject to reimbursement and local governments were permitted to levy taxes in addition to the maximum property tax rate to pay such costs.

On November 6, 1979, the limitation on local government's ability to raise property taxes, and the duty of the State to reimburse for state-mandated costs, became a part of the California Constitution through the initiative process. Article XIII B, section 6, enacted at that time, directs state subvention similar in nature to that required by the preexisting provisions of Revenue and Taxation Code section 2207 and former section 2231. As a defense against this duty to reimburse local agencies, the Legislature began to insert disclaimers in bills which mandated costs on local agencies. It also amended Revenue and Taxation Code section 2206 to expand the definition of nonreimbursable "costs mandated by the federal government" to include the following: "costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state."

In applying this definition here, State offers nothing more than the bare legislative finding contained in Statutes 1974, chapter 1284, section 106. State contends that a federally mandated cost cannot, by definition, be a state-mandated cost. Therefore, if the cost is federally mandated, local agency reimbursement is not required. (13) (See fn. 14.) Although State's argument is correct in the abstract, neither the facts nor federal law supports the underlying assumption that there is a federal mandate.[14]

(12b) Both the Board and the court had in evidence a letter from a responsible official of the federal Occupational Safety and Health Administration (OSHA). The letter emphasizes the independence of state and federal OSHA standards: "OSHA does not have jurisdiction over the fire departments of any political subdivision of a state whether the state has elected to have its own state plan under the OSHA act or not.... [¶] More specifically, in 1978, the State of California promulgated
544 standards applicable to fire departments in California. Therefore, California standards, rather than *544 federal OSHA standards, are applicable to fire departments in that state...." This theme is also reflected in a section of OSHA which expressly disclaims jurisdiction over local agencies such as County. (29 U.S.C. § 652(5).) Accordingly, as a matter of law, there are no federal standards for local government structural fire fighting clothing and equipment.

In short, while the Legislature's enactment of Cal/OSHA to comply with federal OSHA standards is commendable, it certainly was not compelled. Consequently, County's obedience to the 1978 executive orders is not federally mandated.

(14a) The trial court also properly invalidated the budget control language in Statutes 1981, chapter 1090, section 3 (fn. 7, ¶ 7, *ante*) because it violated the single subject rule.[15] This legislative restriction purported to make the reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231 unavailable to County.

(15) The single subject rule essentially requires that a statute have only one subject matter and that the subject be clearly expressed in the statute's title. The rule's primary purpose is to prevent "log-rolling" in the enactment of laws. This disfavored practice occurs where a provision unrelated to a bill's main subject matter and title is included in it with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws which otherwise might not have passed had the legislative mind been directed to them. (*Planned Parenthood Affiliates* v. *Swoap* (1985) 173 Cal. App.3d 1187, 1196 [219 Cal. Rptr. 664].) However, in order to minimize judicial interference in the Legislature's activities, the single subject rule is to be construed liberally. A provision violates the rule only if it does not promote the main purpose of the act or does not have a necessary and natural connection with that purpose. (*Metropolitan Water Dist.* v. *Marquardt* (1963) 59 Cal.2d 159, 172-173 [28 Cal. Rptr. 724, 379 P.2d 28].)

(14b) The stated purpose of chapter 1090 is to increase funds available for reimbursing certain claims. It describes itself as an "act making an appropriation to pay claims of local agencies and school districts for additional reimbursement for specified state-mandated local costs, awarded by the State Board of Control, and declaring the urgency thereof, to take
545 effect immediately." (Stats. 1981, ch. 1090, p. 4191.) There is nothing in this introduction *545 alerting the reader to the fact that the bill prohibits the Board from entertaining claims pursuant to the Cal/OSHA executive orders. The control language does not modify or repeal these orders, nor does it abrogate the necessity for County's continuing compliance therewith. It simply places County's claims reimbursement process in limbo.

This special appropriations bill is similar in kind to appropriations in an annual budget act. Observations that have been made in connection with the enactment of a budget bill are appropriate here. "[T]he annual budget bill is particularly susceptible to abuse of [the single subject] rule. `History tells us that the general appropriation bill presents a special temptation for the attachment of riders. It is a necessary and often popular bill which is certain of passage. If a rider can be attached to it, the rider can be adopted on the merits of the general appropriation bill without having to depend on its own merits for adoption.' [Citation.]" (*Planned Parenthood Affiliates* v. *Swoap, supra,* 173 Cal. App.3d at p. 1198.) Therefore, the annual budget bill must only concern the subject of appropriations to support the annual budget and may not constitutionally be used to substantively amend or change existing statutory law. (*Association for Retarded Citizens* v. *Department of Developmental Services* (1985) 38 Cal.3d 384, 394 [211 Cal. Rptr. 758, 696 P.2d 150].) We see no reason to apply a less stringent standard to a special appropriations bill. Because the language in chapter 1090 prohibiting the Board from processing claims does not reasonably relate to the bill's stated purpose, it is invalid.

(16) The budget control language in chapter 1090 is also invalid as a retroactive disclaimer of County's right to reimbursement for debts incurred in prior years. This legislative technique was condemned in *County of Sacramento* v. *Loeb, supra,* 160 Cal. App.3d at p. 446. There, the Legislature had enacted a Government Code section which prohibited using appropriations for any purpose which had been denied by any formal action of the Legislature. The State attempted to use this code section to uphold a special appropriations bill which had deleted County's Board-approved claims for costs which were incurred prior to the enactment of the code section. The court held that the code section did not apply retroactively to defeat County's claims: "A retroactive statute is one which relates back to a previous transaction and gives that transaction a legal effect different from that which it had under the law when it occurred.... `Absent some clear policy requiring the contrary, statutes modifying liability in civil cases are not to be construed retroactively.'" (*Id.* at p. 459, quoting *Robinson* v. *Pediatric Affiliates Medical Group, Inc.* (1979) 98 Cal. App.3d 907, 912 [159 Cal. Rptr. 791].) Similarly, the control language in chapter 1090 does not apply retroactively to County's prior, Board-approved claims.

546 *546 (17) Finally, the control language in section 28.40 of the 1981 Budget Act and section 26.00[16] of the 1983 and 1984 Budget Acts does not work to defeat County's claims. (Stats. 1981, ch. 99, § 28.40, p. 606; Stats. 1983, ch. 324, § 26.00, p. 1504; Stats. 1984, ch. 258, § 26.00.) This section is comprised of both substantive and procedural provisions. We are concerned primarily with those portions that purport to exonerate State from its constitutionally and statutorily imposed obligation to reimburse County's state-mandated costs.

The writ of mandate directed compliance with the procedural provisions of these sections and is not a point of dispute on appeal. Subsection (a) affords the Legislature one last opportunity to appropriate funds which are to be encumbered for the purpose of paying state-mandated costs, an invitation repeatedly rejected. Subsection (b) directs that the Department of Finance notify the chairpersons of the appropriate committees in each house and chairperson of the Joint Legislative Budget Committee of the need to encumber funds. Presumably, the objective of this procedure is to give the Legislature another opportunity to amend or repeal substantive legislation requiring local agencies to incur state-mandated costs. Again, the Legislature declined to act. Legislative action pursuant to subsection (b) could arguably ameliorate the plight of local agencies prospectively, but would be of no practical assistance to a local agency creditor seeking reimbursement for costs already incurred.

The first portion of each section, however, imposes a budgetary restriction on encumbering appropriated funds to reimburse for state-mandated costs arising out of compliance with the executive orders, absent a specific appropriation pursuant to subparagraph (b). For the reasons stated above, this substantive language is invalid under the single subject rule. It attempts to amend existing statutory law and is unrelated to the Budget Acts' main purpose of appropriating funds to support the annual budget. (*Association for Retarded Citizens* v. *Department of Developmental Services, supra,* 38 Cal.3d at p. 394.) Now unfettered by invalid restrictions, the appropriations involved in this case are reasonably available for reimbursement.

547 *547 **C. *The Legislature's Plenary Power to Regulate Worker Safety Does Not Affect the Right to Reimbursement***

(18) State contends that article XIV, section 4 of the California Constitution vests the Legislature with unlimited plenary power to create and enforce a complete workers' compensation system. It postulates that the Legislature may determine that the interest in worker safety and health is furthered by requiring local agencies to bear the costs of safety devices. This non sequitur is advanced without citation of authority.

Article XIV, section 4 concerns the power to enact workers' compensation statutes and regulations. It does not focus on the issue of reimbursement for state-mandated costs, which is covered by Revenue and Taxation Code section 2207 and former section 2231, and article XIII B, section 6. Since these latter provisions do not effect a pro tanto repeal of the Legislature's plenary power over workers' compensation law (see *County of Los Angeles* v. *State of California, supra,* 43 Cal.3d 46), they do not conflict with article XIV, section 4.

Moreover, even though the reimbursement issue has come before the Legislature repeatedly since 1972, no law has been enacted to exempt compliance with workers' compensation executive orders from the mandatory reimbursement provisions of Revenue and Taxation Code section 2207 and former section 2231. Likewise, article XIII B, section 6 does not provide an exception to the obligation to reimburse local agencies for compliance with these safety orders.

D. *Pre-1980 Claims Are Reimbursable Under Article XIII B, Section 6, Effective July 1, 1980*

(19) State further argues that to the extent County's claims for fiscal years 1978-1979 and 1979-1980 are predicated on the subvention provisions of article XIII B, section 6, they fall within a "window period" of nonreimbursement. This assertion emanates from section 6, subdivision (c), which states that the Legislature "[m]ay, but need not," provide reimbursement for mandates enacted before January 1, 1975. State reasons that because the constitutional amendment did not become effective until July 1, 1980, claims for costs incurred between January 1, 1975 and June 30, 1980, need not be reimbursed.

This notion was rejected in *City of Sacramento* v. *State of California, supra,* 156 Cal. App.3d at p. 182 on behalf of local agencies seeking reimbursement of unemployment insurance costs mandated by a 1978 statute. Basing its decision on
548 well-settled principles of constitutional interpretation *548 and upon a prior published opinion of the Attorney General, the court interpreted section 6, subdivision (c) as follows: "[T]he Legislature *may* reimburse mandates enacted prior to January 1, 1975, and *must* reimburse mandates passed after that date, but does not have to begin such reimbursement until the effective date of article XIII B (July 1, 1980)." (*Id.* at p. 191, italics in original.) In other words, the amendment operates on "window period" mandates even though the reimbursement process may not actually commence until later.

We agree with this reasoning and find costs incurred by County under the 1978 executive orders subject to reimbursement under the Constitution.

E. *Claims Under Revenue and Taxation Code Section 2207 and Former Section 2231 Are Not Time-barred*

(20) Sate collaterally asserts that to the extent County bases its claims on Revenue and Taxation Code section 2207 and former section 2231, they are barred by Code of Civil Procedure sections 335 and 338, subdivision 1. This omnibus challenge to the order directing payment has no merit.

Code of Civil Procedure section 335 is a general introductory section to the statute of limitations for all matters except recovery of real property. Code of Civil Procedure section 338, subdivision 1 requires "[a]n action upon a liability created by statute" to be commenced within three years.

A claimant does not exhaust its administrative remedies and cannot come under the court's jurisdiction until the legislative process is complete. (*County of Contra Costa* v. *State of California* (1986) 177 Cal. App.3d 62, 77 [222 Cal. Rptr. 750].) Here, County pursued its remedy before the Board and prevailed. Thereafter, as required by law, appropriate legislation was introduced. Both the Board hearings and the subsequent efforts to secure legislative appropriations were part of the legislative process. (Former Rev. & Tax. Code, § 2255, subd. (a).) It was not until the legislation was enacted sans appropriations on September 30, 1981 (S.B. 1261) and February 12, 1982 (A.B. 171) that it became unmistakably clear that this process had ended and State had breached its duty to reimburse. At these respective moments of breach, County's right of action in traditional mandamus accrued. County's petition was filed on September 21, 1984, within the three-year statutory period.[17] (*Lerner* v. *Los Angeles City Board of Education, supra*, 59 Cal.2d at p. 398.)

549 *549 **F. *Government Code Section 17612's Remedy for Unfunded Mandates Does Not Supplant the Court's Order***

State continues its general attack on the order directing payment by arguing that the Legislature has "defined" the remedy available to a local agency if a mandate is unfunded. That remedy is found in Government Code section 17612, subdivision (b) and reads: "If the Legislature deletes from a local government claims bill funding for a mandate, the local agency ... *may* file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Italics added.) (See also former Rev. & Tax. Code, § 2255, subd. (c), eff. Oct. 1, 1982.)

State hints that this procedure is the only remedy available to a local agency if funding is not provided. At oral argument, State admitted that this declaration of enforceability and injunction against enforcement would be prospective only. This remedy would provide no relief to local agencies which have complied with the executive orders.

We conclude that Government Code section 17612, subdivision (b) is inapplicable here because it did not become operative until January 1, 1985. It was not in place when the Board rendered its decision on November 20, 1979; when funding was deleted from S.B. 1261 (Sept. 30, 1981) and A.B. 171 (Feb. 12, 1982); or when this litigation commenced on September 21, 1984. (21) A party is not required to exhaust a remedy that was not in existence at the time the action was filed. (*Ross* v. *Superior Court* (1977) 19 Cal.3d 899, 912, fn. 9 [141 Cal. Rptr. 133, 569 P.2d 727].) To abide by this post facto legislation now would condone legislative interference in a specific controversy already assigned to the judicial branch for resolution. (*Serrano* v. *Priest, supra,* 131 Cal. App.3d at p. 201.)

Also, this remedy is purely a discretionary course of action. By using the permissive word "may," the Legislature did not intend to override article XIII B, section 6 and Revenue and Taxation Code section 2207 and former section 2231. These constitutional and statutory imprimaturs each impose upon the State an obligation to reimburse for state-mandated costs. Once that determination is finally made, the State is under a clear and present ministerial duty to reimburse. In the absence of compliance, traditional mandamus lies. (Code Civ. Proc., § 1085.)[18]

550 *550 **G. *The Court's Order Properly Allows County the Right of Offset***

(22a) As the first in a series of objections to portions of the judgment which assist in the reimbursement process, State argues that the court has improperly authorized County to satisfy its claims by offsetting fines and forfeitures due to State. (Fn. 7, ¶ 5, *ante.*) The fines and forfeitures are those found in Penal Code sections 1463.02, 1463.03, 1463.5a and 1464; Government Code sections 13967, 26822.3 and 72056; Fish and Game Code section 13100; Health and Safety Code section 11502; and Vehicle Code sections 1660.7, 42004 and 41103.5.[19]

Broadly speaking, these statutes require County to periodically transfer all or part of the fines and forfeitures collected by it for specified law violations to the State Treasury. They are to be held there "to the credit" of various state agencies, or for payment into specific funds. State contends that since these statutes require mandatory, regular transfers and do not expressly permit diversion for other purposes, the court had no power to allow County to offset. State cites no authority for this contention.

(23) The right to offset is a long-established principle of equity. Either party to a transaction involving mutual debits and credits can strike a balance, holding himself owing or entitled only to the net difference. (*Kruger* v. *Wells Fargo Bank* (1974) 11 Cal.3d 352, 362 [113 Cal. Rptr. 449, 521 P.2d 441, 65 A.L.R.3d 1266].) Although this doctrine exists independent of statute, its governing principle has been partially codified (Code Civ. Proc., § 431.70) (limited to cross-demands for money).

The doctrine has been applied in favor of a local agency against the State. In *County of Sacramento* v. *Lackner* (1979) 97 Cal. App.3d 576 [159 Cal. Rptr. 1], for example, the court of appeal upheld a trial court's decision to grant a writ of mandate that ordered funds awarded the County under a favorable judgment to be offset against its current liabilities to the State under the Medi-Cal program. The court stated that such an order does not interfere with the "Legislature's control over the `submission, approval and enforcement of budgets....'" (*Id.* at p. 592, quoting Cal. Const., art. IV, § 12, subd. (e).)

(22b) The order herein likewise does not impinge upon the Legislature's exclusive power to appropriate funds or control
551 budget matters. The identified *551 fines and forfeitures are collected by the County for statutory law violations. Some of these funds remain with the County, while others are transferred to the State. State's portions are uncertain as to amount and date of transfer. State does not come into actual possession of these funds until they are transferred. State's holding of these funds "to the credit" of a particular agency, or for payment to a specific fund, does not commence until their receipt. Until that time, they are unencumbered, unrestricted and subject to offset.

H. *State's Use of its Statutory Offset Authority Was Properly Enjoined*

(24) State further contends that the trial court exceeded its jurisdiction by enjoining the exercise of State's statutory offset authority until County is fully reimbursed. (Fn. 7, ¶ 11, *ante.*)[20] This order complemented that portion of the order discussed, *infra,* which allowed County to temporarily offset fines and forfeitures as an aid in the reimbursement process.

State correctly observes that it has not unlawfully used its offset authority during the course of this dispute. However, State has not needed to do so because it has adopted other means of avoiding payment on County's claims. In view of State's manifest reluctance to reimburse, and its otherwise unencumbered statutory right of offset, the trial court was well within its authority to prevent this method of frustrating County's collection efforts from occurring. (See *County of Los Angeles* v. *State of California* (1984) 153 Cal. App.3d 568 [200 Cal. Rptr. 394].)

I. *The Injunction Against Reversion or Dissipation of Undisbursed Appropriations Is Proper*

(25) State continues that the order (fn. 7, ¶ 4, *ante*) enjoining it from directly or indirectly reverting the reimbursement award sum from the general fund line item accounts, and from otherwise dissipating that sum in a manner that would make it unavailable to satisfy this court's judgment, violates Government Code section 16304.1.[21] This section reverts undisbursed
552 *552 balances in any appropriation to the fund from which the appropriation was made. No authority is cited for State's proposition. To the contrary, *County of Sacramento* v. *Loeb, supra,* 160 Cal. App.3d at pp. 456-457 expressly confirms this type of ancillary remedy as a legitimate exercise of the court's authority to assist in collecting on an adjudicated debt, the payment of which has been delayed all too long.

That portion of the order restraining reversion is particularly innocuous because it only affects undisbursed balances in an appropriation. At the time of reversion, it is crystal clear that these remaining funds are unneeded for the primary purpose for which appropriated; otherwise, they would not exist. Moreover, that portion of the order restraining dissipation of the reimbursement award sum in a manner that would make it unavailable to satisfy a court's judgment is similarly a proper exercise of the court's authority. By not reimbursing County for the state-mandated costs, State would be contravening its constitutional and statutory obligations to subvent. To the extent it is not reimbursed, County would be compelled, contrary to law, to bear the cost of complying with a state-imposed obligation.

J. *The Auditor Controller and the Specified Funds Are Not Indispensable Parties*

(26), (27) State next contends that the Auditor Controller of Los Angeles County and the "specified" fines and forfeitures County was allowed to offset are indispensable parties. Failure to join them in the action or to serve them with process purportedly renders the trial court's order void as in excess of its jurisdiction.[22] State cites only the general statutory definition of an indispensable party (Code Civ. Proc., § 389) to support this assertion.

553 The Auditor Controller is an officer of the County and is subject to the *553 direction and control of the County board of supervisors. (Gov. Code, §§ 24000, subds. (d), (e), 26880; L.A. County Code, § 2.10.010.) He is indirectly represented in these proceedings because his principal, the County, is the party litigant. Additionally, he claims no personal interest in the fines and forfeitures and his pro forma absence in no way impedes complete relief.

The funds created by the collected fines and forfeitures also are not indispensable parties. This is not an in rem proceeding, and the ownership of a particular stake is not in dispute. Rather, this is an action to compel a ministerial obligation imposed by law. Complete relief may be afforded without including the specified funds as a party.

K. *County is Entitled to Interest*

(28) State insists that an award of interest to County unfairly penalizes State for not paying claims which it was prohibited by law from paying under Statutes 1981, chapter 1090, section 3. This argument is unavailing.

Civil Code section 3287, subdivision (a) allows interest to any person "entitled to recover damages certain, or capable of being made certain by calculation...." Interest begins on the day that the right to recover vests in the claimant. By its own terms, this section applies to any judgment debtor, "including the state ... or any political subdivision of the state."

The judgment orders interest at the legal rate from September 30, 1981, for reimbursement funds originally contained in S.B. 1261, and from February 12, 1982, for the funds originally contained in A.B. 171. These are the respective dates that the bills were enacted without appropriations. As we concluded earlier, County's cause of action did not arise and its right to recover did not vest until this legislative process was complete. County offers no authority to suggest that any other vesting date is appropriate.

Furthermore, State cannot avoid its obligation to pay interest by relying on the invalid budget control language in Statutes 1981, chapter 1090, section 3. "An invalid statute voluntarily enacted and promulgated by the state is not a defense to its obligation to pay interest under Civil Code section 3287, subdivision (a)." (*Olson* v. *Cory* (1983) 35 Cal.3d 390, 404 [197 Cal. Rptr. 843, 673 P.2d 720].)

APPEAL IN CASE NO. 2 CIVIL B011941

(Rincon et al. Case)

The procedural history and legal issues raised in the *Rincon et al.* appeal are essentially similar to those discussed in the County of Los Angeles matter.

554 *554 County, although not a party to this underlying trial court proceeding, filed a test claim with the Board. All parties agree that County represented the interests of the named respondents here.

The Board action resulted in a finding of state-mandated costs. It further found that Rincon et al. were entitled to reimbursement in the amount of $39,432. After the Legislature and the Governor, respectively, deleted the funding from the two appropriations bills, S.B. 1261 and A.B. 171, Rincon et al. filed a petition for writ of mandate and declaratory relief. This action was consolidated for hearing in the trial court with the action in B011942 (County of Los Angeles matter). The within judgment was also signed, filed and entered on February 6, 1985. The reimbursement order was directed against the 1984-1985 budget appropriations. State appeals from that judgment.

The court here included a judicial determination that the Board, or its successors, hear and approve the claims of certain other respondents for costs incurred in connection with the state-mandated program. (Fn. 7, ¶ 9, *ante.*) This special directive was necessary because the claims of these respondents (petitioners below) have not yet been determined.[23] Since we have ruled that State is barred by the doctrines of waiver and administrative collateral estoppel from raising the state mandate issue, the validity of these claims becomes a question of law susceptible to but one conclusion, and mandamus properly lies. (*County of Sacramento* v. *Loeb, supra,* 160 Cal. App.3d at p. 453.) This portion of the order also underscores, for the Board's edification, the determination that the statutory restriction on the Board authority to proceed is invalid.[24]

Once again, our determinations and conclusions in the County of Los Angeles matter are equally applicable here.

APPEAL IN CASE NO. 2 CIVIL B006078

(Carmel Valley et al.)

Again, the procedural history and legal issues raised in this appeal are essentially similar to those discussed in the County of Los Angeles matter.

County filed a test claim with the Board. All parties agree that the County represented the interests of the named respondents here.

555 *555 On December 17, 1980, the Board found that a state mandate existed and that specific amounts of reimbursement were due several respondents totaling $159,663.80. Following the refusal of the Legislature to appropriate funds for reimbursement, Carmel Valley et al. filed a petition for writ of mandate and declaratory relief on January 3, 1983. Judgment was entered on May 23, 1984. The reimbursement order was directed against 1983-1984 budget appropriations.

The judgment differs from the other two because it does not decree a specific reimbursement amount. The trial court determined that even though the Board had approved the claims, the State was not precluded from contesting that determination. The court's reasons were that the State, in its answer, had denied that the money claimed was actually spent, and that Board approval had not been implemented by subsequent legislation. The court concluded that the reimbursement process, of which the Board action was an intrinsic part, was "aborted."

We disagree with this portion of the court's analysis. The moment S.B. 1261 and A.B. 171 were enacted into law without appropriations, Carmel Valley et al. had exhausted their administrative remedies and were entitled to seek a writ of mandate. At the time of trial, State was barred by the doctrines of waiver and administrative collateral estoppel from contesting the state mandate issue or the amount of reimbursement. The trial court therefore should have rendered a judgment for the amount of reimbursement. Having failed to do so, this fact-finding responsibility falls upon this court. Although we ordinarily are not equipped to handle this function, the writ of mandate in this case identifies the amount of the approved claims as $159,663.80. We accordingly will amend the judgment to reflect that amount.

The trial court also predicated its judgment for Carmel Valley et al. solely on the basis of Revenue and Taxation Code section 2207 and former section 2231. In doing so, the court did not have the benefit of the decision in *City of Sacramento* v. *State of California, supra,* 156 Cal. App.3d at p. 182.[25] That case held that mandates passed after January 1, 1975, must be reimbursed pursuant to article XIII B, section 6 of the California Constitution, but that reimbursement need not

commence until July 1, 1980. In light of this rule, we conclude that the trial court's decision ordering reimbursement is also supported by article XIII B, section 6.

556 *556 State raises another point specific to this particular appeal. In its answer to the writ petition, State admitted that the local agency expenditures were state mandated. Consequently, the issue was not contested at the trial court level. However, State vigorously contends here that it is not bound by its trial court admissions because the state mandate issue is purely a question of law.

(29) State is correct in contending that an appellate court is not limited by the interpretation of statutes given by the trial court. (*City of Merced* v. *State of California, supra,* 153 Cal. App.3d at p. 781.) However, State's victory on this point is Pyrrhic. Regardless of how the issue is characterized, State is precluded from contesting the Board findings on appeal because of the independent application of the doctrines of waiver and administrative collateral estoppel. These doctrines would also have applied at the trial court level if State's answer had raised the issue of state mandate in the first instance.

We also reject State's argument, advanced for the first time on appeal, that the executive orders of 1978 initially implement legislation enacted prior to January 1, 1975, and that state reimbursement is therefore discretionary. (Cal. Const., art. XIII B, § 6, subd. (c).) Again, State is barred by the doctrines of waiver and administrative collateral estoppel from arguing that costs incurred under the executive orders are not subject to reimbursement.

State continues that the *Carmel Valley* judgment against the Department of Industrial Relations is erroneous. Since the department was never made a party in the suit, nor served with process, the resulting judgment reflects a denial of due process and is in excess of the court's jurisdiction. (See Code Civ. Proc., § 389; fn. 22, *ante.*)

This assertion is but a variant of the same argument advanced in the County of Los Angeles case, *supra,* which we rejected as meritless. The department is part of the State of California. (Lab. Code, § 50.) State extensively argued the department's position and even offered into evidence a declaration from the chief of fiscal accounting of the department. As stated earlier, agents of the same government are in privity with each other. (*People* v. *Sims, supra,* 32 Cal.3d at p. 487.)

Ross v. *Superior Court, supra,* 19 Cal.3d at p. 899 demonstrates how, through the notion of privity, a government agent can be held in contempt for knowingly violating a court order issued against another agent of the same government. There, a court in an earlier proceeding had decided that defendant Department of Health and Welfare must pay unlawfully withheld
557 welfare benefits to qualified recipients. The County Board of Supervisors, *557 who were not parties to this action, knew about the court's order but refused to comply. The Supreme Court affirmed a trial court decision holding the Board in contempt for violating the order directing payment. The court reasoned that, as an agent of the Department of Health and Welfare, the Board did not collectively or individually need to be named as a party in order to be bound by a court order of which they had actual knowledge.

The determinations and conclusions in the County of Los Angeles case are likewise applicable here.

MODIFICATION OF JUDGMENTS IN ALL THREE APPEALS

The trial court judgments ordering reimbursement from specific account appropriations were entered many months ago. We will affirm these judgments and thereby validate the trial courts' determination that funds already appropriated for the State Department of Industrial Relations were reasonably available for payment at the time of the courts' orders.

Due to the passage of time, we requested State at oral argument to confirm whether the appropriations designated in the respective judgments are still available for encumbrance. State's counsel responded by rearguing that the weight of the evidence did not support the trial courts' findings that specific funds were reasonably available for reimbursement. Counsel further hinted that the funds may not actually be available.

We hope that counsel for the State is mistaken. But in order to emphasize our strong and unequivocal determination that the local agency petitioners be promptly reimbursed, we will take judicial notice of the enactment of the 1985-1986 Budget Act (Stats. 1985, ch. 111) and the 1986-1987 Budget Act (Stats. 1986, ch. 186). (*Serrano* v. *Priest, supra,* 131 Cal. App.3d at p. 197.) Both acts appropriate money for the State Department of Industrial Relations and fund the identical account numbers referred to in the trial courts' judgments. They are:

Account Numbers	*1985-1986 Budget Act*	*1986-1987 Budget Act*
XXXX-XXX-XXX	$94,673,000	$106,153,000
XXXX-XXX-XXX	2,295,000	2,514,000
XXXX-XXX-XXX	2,859,000	2,935,000
XXXX-XXX-XXX	16,753,000	17,864,000

(30) An appellate court is empowered to add a directive that the trial court order be modified to include charging orders against funds appropriated by subsequent budget acts. (*Serrano* v. *Priest, supra,* 131 Cal. App.3d at pp. 198, 201.) We do so here with respect to all three judgments.

558 *558 **DISPOSITION**

2d Civ. B011942 (*County of Los Angeles Case*)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The words "Fish and Game Code Section 13100" are deleted from paragraph 5.

(3) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B011941 (*Rincon et al. Case*)

The judgment is modified as follows:

(1) The following sentence is added to paragraph 2: "If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

2d Civ. B006078 (*Carmel Valley et al. Case*)

The judgment is modified as follows:

559 *559 (1) The following sentences are added to paragraph 2: "The reimbursement amounts total $159,663.80. If the hereinabove described funds are not available for reimbursement, the warrants shall be drawn against funds in the same account numbers enacted in the 1985-86 and 1986-87 Budget Acts."

(2) The peremptory writ of mandate is modified to command the Controller to draw warrants, if necessary, against the same account numbers identified in the judgment as appropriated by the 1985-1986 and 1986-1987 Budget Acts.

As modified, the judgment is affirmed. Respondents to recover costs on appeal.

Ashby, Acting P.J., and Hastings, J., concurred.

A petition for a rehearing was denied March 17, 1987, and appellants petition for review by the Supreme Court was denied May 14, 1987. Eagleson, J., did not participate therein.

[1] *2d Civ. B006078:* The petitioners below and respondents on appeal are Carmel Valley Fire Protection District, City of Anaheim, Aptos Fire Protection District, Citrus Heights Fire Protection District, Fair Haven Fire Protection District, City of Glendale, City of San Luis Obispo, County of Santa Barbara and Ventura County Fire Protection District.

The respondents below and appellants here are State of California, Kenneth Cory and Jesse Marvin Unruh.

2d Civ. B011941: The petitioners below and respondents on appeal are Rincon Del Diablo Municipal Water District, Twenty-Nine Palms Water District, Alpine Fire Protection District, Bonita-Sunnyside Fire Protection District, Encinitas Fire Protection District, Fallbrook Fire Protection District, City of San Luis Obispo, Montgomery Fire Protection District, San Marcos Fire Protection District, Spring Valley Fire Protection District, Vista Fire Protection District and City of Coronado.

Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, State Board of Control, Kenneth Cory, State Controller, Jesse Marvin Unruh, State Treasurer, and Mark H. Bloodgood, Auditor-Controller, County of Los Angeles.

2d Civ. B011942: The County of Los Angeles is the petitioner below and respondent on appeal. Respondents below and appellants here are State of California, State Department of Finance, State Department of Industrial Relations, Kenneth Cory, and Jesse Marvin Unruh.

All respondents on appeal are conceded to be "local agencies," as defined in Revenue and Taxation Code section 2211.

[2] The pertinent parts of Revenue and Taxation Code section 2207 provide: "`Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program; [¶] (b) Any executive order issued after January 1, 1973, which mandates a new program; [¶] (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973...."

[3] The pertinent parts of former Revenue and Taxation Code section 2231, subdivision (a) provide: "The state shall reimburse each local agency for all `costs mandated by the state', as defined in Section 2207." This section was repealed (Stats. 1986, ch. 879, § 23), and replaced by Government Code section 17561. We will refer to the earlier code section.

[4] The pertinent parts of section 6, article XIII B of the California Constitution, enacted by initiative measure, provide: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶]].... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." This constitutional amendment became effective July 1, 1980.

[5] County filed its test claim pursuant to former Revenue and Taxation Code section 2218, which was repealed by Statutes 1986, chapter 879, section 19.

Additionally, the Board is no longer in existence. The Commission on State Mandates has succeeded to these functions. (Gov. Code, §§ 17525, 17630.)

[6] The final legislation did include appropriations for other local agencies on other types of approved claims.

[7] "1. The Court adjudges and declares that funds appropriated by the Legislature for the State Department of Industrial Relations for the Prevention of Industrial Injuries and Deaths of California Workers within the Department's General Fund may properly be and should be spent for the reimbursement of state-mandated costs incurred by Petitioner as established in this action.

"2. A peremptory writ of mandamus shall issue under the seal of this Court, commanding Respondent State of California, through its Department of Finance, to give notification in writing as specified in Section 26.00 of the Budget Act of 1984 (Chapter 258, Statutes of 1984) of the necessity to encumber funds in conformity [with] this order and, unless the Legislature approves a bill that would enact a general law, within 30 days of said notification that would obviate the necessity of such payment, Respondent Kenn[e]th Cory, the State Controller of the State of California, or his successors in office, if any, shall draw warrants on funds appropriated for the State Department of Industrial Relations for the 1984-85 Budget Year in account numbers XXXX-XXX-XXX, XXXX-XXX-XXX, XXXX-XXX-XXX, and XXXX-XXX-XXX as implemented in Chapter 258 Statutes of 1984, sufficient to satisfy the claims of Petitioner, plus interest, as set forth in the motion and accompanying writ of mandamus. Said writ shall also issue against Jessie [*sic*] Marvin Unruh, the State Treasurer of the State of California, and his successors in office, if any, commanding him to make payment on the warrants drawn by Respondent Kenneth Cory.

"3. Pending the final disposition of this proceeding, or the payment of the applicable reimbursement claims and interest as set forth herein, Respondents, and each of of [*sic*] them, their successors in office, agents, servants and employees and all persons acting in concert [or] participation with them, are hereby enjoined and restrained from directly or indirectly expending from the 1984-85 General Fund Budget of the State Department of Industrial Relations as is more particularly described in paragraph number 2 hereinabove, any sums greater than that which would leave in said budget at the conclusion of the 1984-85 fiscal year an amount less than the reimbursement amounts on the aggregate amount of $307,685 in this case, together with interest at the legal rate through payment of said reimbursement amounts. Said amounts are hereinafter referred to collectively as the `reimbursement award sum'.

"4. Pending the final disposition of this proceeding or the payment of the reimbursement award sum at issue herein, Respondents, and each of them, their successors in office, agents, servants and employees, and all persons acting in concert or participation with them, are

hereby enjoined and restrained from directly or indirectly reverting the reimbursement award sum from the General Fund line-item accounts of the Department of Industrial Relations to the General Funds of the State of California and from otherwise dissipating the reimbursement award sum in a manner that would make it unavailable to satisfy this Court's judgment.

"5. In addition to the foregoing relief, Petitioner is entitled to offset amounts sufficient to satisfy the claims of Petitioner, plus interest, against funds held by Petitioner as fines and forfeitures which are collected by the local Courts, transferred to the Petitioner and remitted to Respondents on a monthly basis. Those fines and forfeitures are levied, and their distribution provided, as set forth in Penal Code Sections 1463.02, 1463.03, 14[6]3.5[a], and 1464; Government Code Sections 13967, 26822.3 and 72056, Fish and Game Code Section 13100; Health and Safety Code Section 11502 and Vehicle Code Sections 1660.7, 42004, and 41103.5.

"6. The Court adjudges and declares that the State has a continuing obligation to reimburse Petitioner for costs incurred in fiscal years subsequent to its claim for expenditures in the 1978-79 and 1979-80 fiscal years as set forth in the petition and the accompanying motion for the issuance of a writ of mandate.

"7. The Court adjudges and declares that deletion of funding and prohibition against accepting claims for expenditures incurred as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 as contained in Section 3 of Chapter 109[0], Statutes of 1981 were invalid and unconstitutional.

"8. The Court adjudges and declares that the expenditures incurred by Petitioner as a result of the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 were not the result of any federally mandated program.

"9. A peremptory writ of mandamus shall issue under the seal of this Court commanding Respondent State Board of Control, or its successor-in-interest, to hear and approve the claims of Petitioner for costs incurred in complying with the state-mandated program of Title 8, California Administrative Code Sections 3401 through 3409 subsequent to fiscal year 1979-80.

".... ....

"11. The Court adju[d]ges and declares that the State Respondents are prohibited from offsetting, or attempting to implement an offset against moneys due and owing Petitioner until Petitioner is completely reimbursed for all of its costs in complying with the state mandate of Title 8, California Administrative Code Sections 3401 through 3409."

[8] This language is taken from Revenue and Taxation Code section 2207 and former section 2231. Article XIII B, section 6 refers to "higher" level of service rather than "increased" level of service. We perceive the intent of the two provisions to be identical. The parties also use these words interchangeably.

[9] As it happened, the entire Board determination involved a question of law since the dollar amount of the claimed reimbursement was not disputed.

[10] State is not precluded from raising this new issue on appeal. Questions of law decided by an administrative agency invoke the collateral estoppel doctrine only when a determination of conclusiveness will not work an injustice. Likewise, the doctrine of waiver is inapplicable if a litigant has no actual or constructive knowledge of his rights. Since the *State of California* rule had not been announced at the time of the Board or trial court proceedings herein, the doctrines of waiver and collateral estoppel are inapplicable to State on this particular issue. Both parties have been afforded additional time to brief the matter.

[11] County suggests that to the extent private fire brigades exist, they are customarily part-time individuals who perform the function on a part-time basis. As such, they are excluded by the balance of the definitional term in title 8, California Administrative Code section 3402, which provides, in pertinent part: "... The term [fire fighter] does not apply to emergency pick-up labor or other persons who may perform first-aid fire extinguishment as collateral to their regular duties."

[12] Article III, section 3 of the California Constitution provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."

Article XVI, section 7 of the California Constitution provides: "Money may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant."

[13] When Governor Brown deleted the appropriations from A.B. 171, he stated that he was relying on the pronouncements in Statutes 1974, chapter 1284 and Statutes 1981, chapter 1090.

[14] We address this subject only because the trial court found that the costs were not federally mandated. Actually, State cannot raise this issue on appeal because of the waiver and administrative collateral estoppel doctrines. We note, however, where there is a quasi-judicial finding that a cost is state mandated, there is an implied finding that the cost is not federally mandated; the two concepts are mutually exclusive.

Moreover, our task is aided by the fact that interpretation of statutory language is purely a judicial function. Legislative declarations are not binding on the courts and are particularly suspect when they are the product of an attempt to avoid financial responsibility. (*City of Sacramento* v. *State of California*, *supra*, 156 Cal. App.3d at pp. 196-197.)

[15] Article IV, section 9 of the California Constitution reads: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended."

[16] Each of these sections contains the following language: "No funds appropriated by this act shall be encumbered for the purpose of funding any increased state costs or local governmental costs, or both such costs, arising from the issuance of an executive order as defined in section 2209 of the Revenue and Taxation Code or subject to the provisions of section 2231 of the Revenue and Taxation Code, unless (a) such funds to be encumbered are appropriated for such purpose, or (b) notification in writing of the necessity of the encumbrance of funds available to the state agency, department, board, bureau, office, or commission is given by the Department of Finance, at least 30 days before such encumbrance is made, to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or such lesser time as the chairperson of the committee, or his or her designee, determines."

[17] Technically, State has waived the statute of limitations defense because it was not raised in its answer. (*Ventura County Employees' Retirement Association* v. *Pope* (1978) 87 Cal. App.3d 938, 956 [151 Cal. Rptr. 695].)

[18] We leave undecided the question of whether this type of legislation could ever be held to override California Constitution, article XIII B, section 6. The Constitution of the State is supreme. Any statute in conflict therewith is invalid. (*County of Los Angeles* v. *Payne*, *supra*, 8 Cal.2d at p. 574.)

Similarly, former Revenue and Taxation Code section 2255, subdivision (c) cannot abrogate the constitutional directive to reimburse.

[19] At oral argument, County conceded that the order authorizing offset of Fish and Game Code section 13100 fines and forfeitures is inappropriate. These collected funds must be spent exclusively for protection, conservation, propagation or preservation of fish, game, mollusks, or crustaceans, and for administration and enforcement of laws relating thereto, or for any such purpose. (Cal. Const., art. XVI, § 9; 20 Ops. Cal. Atty. Gen. 110 (1952).)

[20] Government Code section 12419.5 provides: "The Controller may, in his discretion, offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The Controller may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant.... The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided." (See also *Tyler* v. *State of California* (1982) 134 Cal. App.3d 973, 975-976 [185 Cal. Rptr. 49].)

[21] Government Code section 16304.1 provides: "Disbursements in liquidation of encumbrances may be made before or during the two years following the last day an appropriation is available for encumbrance.... Whenever, during [such two-year period], the Director of Finance determines that the project for which the appropriation was made is completed and that a portion of the appropriation is not necessary for disbursements, such portion shall, upon order of the Director of Finance, revert to and become a part of the fund from which the appropriation was made. Upon the expiration of two years ... following the last day of the period of its availability, the undisbursed balance in any appropriation shall revert to and become a part of the fund from which the appropriation was made...."

[22] Code of Civil Procedure section 389, subdivision (a) provides: "A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party."

[23] Responding to the budget control language directing it to refuse to process these claims, the Board declined to hear these matters.

[24] Because certain claims have not yet been processed, we assume that the issue of the amount of reimbursement may still be at large. Our record is not clear on this point.

[25] The decision in *City of Sacramento, supra,* was filed just one day before the trial court signed the written order in this case. The Revenue and Taxation Code sections on which the court relied were operational before the costs claimed in this case were incurred.

CITATION 43 CAL.3D 46

County of Los Angeles v. State of California

County of Los Angeles v. State of California (1987) 43 Cal.3d 46 , 729 P.2d 202; 233 Cal.Rptr. 38

[L.A. No. 32106. Supreme Court of California. January 2, 1987.]

COUNTY OF LOS ANGELES et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents.

CITY OF SONOMA et al., Plaintiffs and Appellants, v. THE STATE OF CALIFORNIA et al., Defendants and Respondents

(Opinion by Grodin, J., with Bird, C. J., Broussard, Reynoso, Lucas and Panelli, JJ., concurring. Separate concurring opinion by Mosk, J.)

COUNSEL

De Witt W. Clinton, County Counsel, Paula A. Snyder, Senior Deputy County Counsel, Edward G. Pozorski, Deputy County Counsel, John W. Witt, City Attorney, Kenneth K. Y. So, Deputy City Attorney, William D. Ross, Diana P. Scott, Ross & Scott and Rogers & Wells for Plaintiffs and Appellants.

James K. Hahn, City Attorney (Los Angeles), Thomas C. Bonaventura and Richard Dawson, Assistant City Attorneys, and Patricia V. Tubert, Deputy City Attorney, as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, N. Eugene Hill, Assistant Attorney General, Henry G. Ullerich and Martin H. Milas, Deputy Attorneys General, for Defendants and Respondents.

Laurence Gold, Fred H. Altshuler, Marsha S. Berzon, Gay C. Danforth, Altshuler & Berzon, Charles P. Scully II, Donald C. Carroll, Peter Weiner, Heller, Ehrman, White & McAuliffe, Donald C. Green, Terrence S. Terauchi, Manatt, Phelps, Rothenberg & Tunney and Clare Bronowski as Amici Curiae on behalf of Defendants and Respondents.

OPINION

GRODIN, J.

We are asked in this proceeding to determine whether legislation enacted in 1980 and 1982 increasing certain workers' compensation benefit payments is subject to the command of article XIII B of the California Constitution that local government costs mandated by the state must be funded by the state. The County of Los Angeles and the City of Sonoma sought review by this court of a decision of the Court of Appeal which held that state-mandated increases in workers' compensation benefits that do not exceed the rise in the cost of living are not costs which must be borne by the state under article XIII B, an initiative constitutional provision, and legislative implementing statutes.

Although we agree that the State Board of Control properly denied plaintiffs' claims, our conclusion rests on grounds other than those relied upon by the Court of Appeal, and requires that its judgment be reversed. [1] We conclude that when the voters

adopted article XIII B, section 6, their intent was not to require the state to provide subvention whenever a newly enacted statute resulted incidentally in some cost to local agencies. Rather, the drafters and the electorate had in mind subvention for the expense or [43 Cal.3d 50] increased cost of programs administered locally and for expenses occasioned by laws that impose unique requirements on local governments and do not apply generally to all state residents or entities. In using the word "programs" they had in mind the commonly understood meaning of the term, programs which carry out the governmental function of providing services to the public. Reimbursement for the cost or increased cost of providing workers' compensation benefits to employees of local agencies is not, therefore, required by section 6.

We recognize also the potential conflict between article XIII B and the grant of plenary power over workers' compensation bestowed upon the Legislature by section 4 of article XIV, but in accord with established rules of construction our construction of article XIII B, section 6, harmonizes these constitutional provisions.

I

On November 6, 1979, the voters approved an initiative measure which added article XIII B to the California Constitution. That article imposed spending limits on the state and local governments and provided in section 6 (hereafter section 6): "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." No definition of the phrase "higher level of service" was included in article XIII B, and the ballot materials did not explain its meaning. fn. 1

The genesis of this action was the enactment in 1980 and 1982, after article XIII B had been adopted, of laws increasing the amounts which [43 Cal.3d 51] employers, including local governments, must pay in workers' compensation benefits to injured employees and families of deceased employees.

The first of these statutes, Assembly, Bill No. 2750 (Stats. 1980, ch. 1042, p. 3328), amended several sections of the Labor Code related to workers' compensation. The amendments of Labor Code sections 4453, 4453.1 and 4460 increased the maximum weekly wage upon which temporary and permanent disability indemnity is computed from $231 per week to $262.50 per week. The amendment of section 4702 of the Labor Code increased certain death benefits from $55,000 to $75,000. No appropriation for increased state-mandated costs was made in this legislation. fn. 2

Test claims seeking reimbursement for the increased expenditure mandated by these changes were filed with the State Board of Control in 1981 by the County of San Bernardino and the City of Los Angeles. The board rejected the claims, after hearing, stating that the increased maximum workers' compensation benefit levels did not change the terms or conditions under which benefits were to be awarded, and therefore did not, by increasing the dollar amount of the benefits, create an increased level of service. The first of these consolidated actions was then filed by the County of Los Angeles, the County of San Bernardino, and the City of San Diego, seeking a writ of mandate to compel the board to approve the reimbursement claims for costs incurred in providing an increased level of service mandated by the state pursuant to Revenue and Taxation Code section 2207. fn. 3 They also sought a declaration that because the State of California and the board were obliged by article XIII B to reimburse them, they were not obligated to pay the increased benefits until the state provided reimbursement.

The superior court denied relief in that action. The court recognized that although increased benefits reflecting cost of living raises were not expressly [43 Cal.3d 52] excepted from the requirement of state reimbursement in section 6 the intent of article XIII B to limit governmental expenditures to the prior year's level allowed local governments to make adjustment for changes in the cost of living, by increasing their own appropriations. Because the Assembly Bill No. 2750 changes did not exceed cost

of living changes, they did not, in the view of the trial court, create an "increased level of service" in the existing workers' compensation program.

The second piece of legislation (Assem. Bill No. 684), enacted in 1982 (Stats. 1982, ch. 922. p. 3363), again changed the benefit levels for workers' compensation by increasing the maximum weekly wage upon which benefits were to be computed, and made other changes among which were: The bill increased minimum weekly earnings for temporary and permanent total disability from $73.50 to $168, and the maximum from $262.50 to $336. For permanent partial disability the weekly wage was raised from a minimum of $45 to $105, and from a maximum of $105 to $210, in each case for injuries occurring on or after January 1, 1984. (Lab. Code, § 4453.) A $10,000 limit on additional compensation for injuries resulting from serious and willful employer misconduct was removed (Lab. Code, § 4553), and the maximum death benefit was raised from $75,000 to $85,000 for deaths in 1983, and to $95,000 for deaths on or after January 1, 1984. (Lab. Code, § 4702.)

Again the statute included no appropriation and this time the statute expressly acknowledged that the omission was made "[n]otwithstanding section 6 of Article XIIIB of the California Constitution and section 2231 ... of the Revenue and Taxation Code." (Stats. 1982, ch. 922, § 17, p. 3372.) fn. 4

Once again test claims were presented to the State Board of Control, this time by the City of Sonoma, the County of Los Angeles, and the City of San Diego. Again the claims were denied on grounds that the statute made no change in the terms and conditions under which workers' compensation benefits were to be awarded, and the increased costs incurred as a result of higher benefit levels did not create an increased level of service as defined in Revenue and Taxation Code section 2207, subdivision (a).

The three claimants then filed the second action asking that the board be compelled by writ of mandate to approve the claims and the state to pay them, and that chapter 922 be declared unconstitutional because it was not adopted in conformity with requirements of the Revenue and Taxation Code or [43 Cal.3d 53] section 6. The trial court granted partial relief and ordered the board to set aside its ruling. The court held that the board's decision was not supported by substantial evidence and legally adequate findings on the presence of a state-mandated cost. The basis for this ruling was the failure of the board to make adequate findings on the possible impact of changes in the burden of proof in some workers' compensation proceedings (Lab. Code, § 3202.5); a limitation on an injured worker's right to sue his employer under the "dual capacity" exception to the exclusive remedy doctrine (Lab. Code, §§ 3601-3602); and changes in death and disability benefits and in liability in serious and wilful misconduct cases. (Lab. Code, § 4551.)

The court also held: "[T]he changes made by chapter 922, Statutes of 1982 may be excluded from state-mandated costs if that change effects a cost of living increase which does not impose a higher or increased level of service on an existing program." The City of Sonoma, the County of Los Angeles, and the City of San Diego appeal from this latter portion of the judgment only.

II

The Court of Appeal consolidated the appeals. The court identified the dispositive issue as whether legislatively mandated increases in workers' compensation benefits constitute a "higher level of service" within the meaning of section 6, or are an "increased level of service" fn. 5 described in subdivision (a) of Revenue and Taxation Code section 2207. The parties did not question the proposition that higher benefit payments might constitute a higher level of "service." The dispute centered on whether higher benefit payments which do not exceed increases in the cost of living constitute a higher level of service. Appellants maintained that the reimbursement requirement of section 6 is absolute and permits no implied or judicially created exception for increased costs that do not exceed the inflation rate. The Court of Appeal addressed the problem as one of defining "increased level of service."

The court rejected appellants' argument that a definition of "increased level of service" that once had been included in section 2231, subdivision (e) of the Revenue and Taxation Code should be applied. That definition brought any law that imposed "additional costs" within the scope of "increased level of service." The court concluded that the repeal of section 2231 in 1975 (Stats. 1975, ch. 486, § 7, pp. 999-1000) and

the failure of the Legislature by statute or the electorate in article XIII B to readopt the [43 Cal.3d 54] definition must be treated as reflecting an intent to change the law. (Eu v. Chacon (1976) 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289].) fn. 6 On that basis the court concluded that increased costs were no longer tantamount to an increased level of service.

The court nonetheless assumed that an increase in costs mandated by the Legislature did constitute an increased level of service if the increase exceeds that in the cost of living. The judgment in the second, or "Sonoma" case was affirmed. The judgment in the first, or "Los Angeles" case, however, was reversed and the matter "remanded" to the board for more adequate findings, with directions. fn. 7

III

The Court of Appeal did not articulate the basis for its conclusion that costs in excess of the increased cost of living do constitute a reimbursable increased level of service within the meaning of section 6. Our task in ascertaining the meaning of the phrase is aided somewhat by one explanatory reference to this part of section 6 in the ballot materials.

A statutory requirement of state reimbursement was in effect when section 6 was adopted. That provision used the same "increased level of service" phraseology but it also failed to include a definition of "increased level of service," providing only: "Costs mandated by the state' means any increased costs which a local agency is required to incur as a result of the following: [¶] (a) Any law ... which mandates a new program or an increased level of service of an existing program." (Rev. & Tax. Code § 2207.) As noted, however, the definition of that term which had been [43 Cal.3d 55] included in Revenue and Taxation Code section 2164.3 as part of the Property Tax Relief Act of 1972 (Stats. 1972, ch. 1406, § 14.7, p. 2961), had been repealed in 1975 when Revenue and Taxation Code section 2231, which had replaced section 2164.3 in 1973, was repealed and a new section 2231 enacted. (Stats. 1975. ch. 486, §§ 6 & 7, p. 999.) fn. 8 Prior to repeal, Revenue and Taxation Code section 2164.3, and later section 2231, after providing in subdivision (a) for state reimbursement, explained in subdivision (e) that ""Increased level of service' means any requirement mandated by state law or executive regulation ... which makes necessary expanded or additional costs to a county, city and county, city, or special district." (Stats. 1972, ch. 1406, § 14.7, p. 2963.)

[2] Appellants contend that despite its repeal, the definition is still valid, relying on the fact that the Legislature, in enacting section 2207, explained that the provision was "declaratory of existing law." (Stats. 1975, ch. 486, § 18.6, p. 1006.) We concur with the Court of Appeal in rejecting this argument. "[I]t is ordinarily to be presumed that the Legislature by deleting an express provision of a statute intended a substantial change in the law." (Lake Forest Community Assn. v. County of Orange (1978) 86 Cal.App.3d 394, 402 [150 Cal.Rptr. 286]; see also Eu v. Chacon, supra, 16 Cal.3d 465, 470.) Here, the revision was not minor: a whole subdivision was deleted. As the Court of Appeal noted, "A change must have been intended; otherwise deletion of the preexisting definition makes no sense."

Acceptance of appellants' argument leads to an unreasonable interpretation of section 2207. If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post–1975 statutory scheme. Since that definition has been repealed, an act of which the drafters of section 6 and the electorate are presumed to have been [43 Cal.3d 56] aware, we may not conclude that an intent existed to incorporate the repealed definition into section 6.

[3] In construing the meaning of the constitutional provision, our inquiry is not focussed on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979. To determine this intent, we must look to the language of the provision itself. (ITT World Communications, Inc. v. City and County of San Francisco (1985) 37 Cal.3d 859, 866 [210 Cal.Rptr. 226, 693 P.2d 811].) In section 6, the electorate commands that the state reimburse local agencies for the cost of any "new

program or higher level of service." Because workers' compensation is not a new program, the parties have focussed on whether providing higher benefit payments constitutes provision of a higher level of service. As we have observed, however, the former statutory definition of that term has been incorporated into neither section 6 nor the current statutory reimbursement scheme.

[4] Looking at the language of section 6 then, it seems clear that by itself the term "higher level of service" is meaningless. It must be read in conjunction with the predecessor phrase "new program" to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing "programs." But the term "program" itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term -- programs that carry out the governmental function of providing services 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.

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: "Additionally, this measure: (1) Will not allow the state government to force programs on local governments without the state paying for them." (Ballot Pamp., Proposed Amend. to Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18. Italics added.) In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not [43 Cal.3d 57] for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to "force" programs on localities.

The language of section 6 is far too vague to support an inference that it was intended that each time the Legislature passes a law of general application it must discern the likely effect on local governments and provide an appropriation to pay for any incidental increase in local costs. We believe that if the electorate had intended such a far-reaching construction of section 6, the language would have explicitly indicated that the word "program" was being used in such a unique fashion. (Cf. Fuentes v. Workers' Comp. Appeals Bd. (1976) 16 Cal.3d 1, 7 [128 Cal.Rptr. 673, 547 P.2d 449]; Big Sur Properties v. Mott (1976) 63 Cal.App.3d 99, 105 [132 Cal.Rptr. 835].) Nothing in the history of article XIII B that we have discovered, or that has been called to our attention by the parties, suggests that the electorate had in mind either this construction or the additional indirect, but substantial impact it would have on the legislative process.

Were section 6 construed to require state subvention for the incidental cost to local governments of general laws, the result would be far-reaching indeed. Although such laws may be passed by simple majority vote of each house of the Legislature (art. IV, § 8, subd. (b)), the revenue measures necessary to make them effective may not. A bill which will impose costs subject to subvention of local agencies must be accompanied by a revenue measure providing the subvention required by article XIII B. (Rev. & Tax. Code, §§ 2255, subd. (c).) Revenue bills must be passed by two-thirds vote of each house of the Legislature. (Art. IV, § 12, subd. (d).) Thus, were we to construe section 6 as applicable to general legislation whenever it might have an incidental effect on local agency costs, such legislation could become effective only if passed by a supermajority vote. fn. 9 Certainly no such intent is reflected in the language or history of article XIII B or section 6.

[5] We conclude therefore that section 6 has no application to, and the state need not provide subvention for, the costs incurred by local agencies in providing to their employees the same increase in workers' compensation [43 Cal.3d 58] benefits that employees of private individuals or organizations receive. fn. 10 Workers' compensation is not a program administered by local agencies to provide service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from

private employers. In no sense can employers, public or private, be considered to be administrators of a program of workers' compensation or to be providing services incidental to administration of the program. Workers' compensation is administered by the state through the Division of Industrial Accidents and the Workers' Compensation Appeals Board. (See Lab. Code, § 3201 et seq.) Therefore, although the state requires that employers provide workers' compensation for nonexempt categories of employees, increases in the cost of providing this employee benefit are not subject to reimbursement as state-mandated programs or higher levels of service within the meaning of section 6.

IV

[6] Our construction of section 6 is further supported by the fact that it comports with controlling principles of construction which "require that in the absence of irreconcilable conflict among their various parts, [constitutional provisions] must be harmonized and construed to give effect to all parts. (Clean Air Constituency v. California State Air Resources Bd. (1974) 1 Cal.3d 801, 813-814 [114 Cal.Rptr. 577, 523 P.2d 617]; Serrano v. Priest (1971) 5 Cal.3d 584, 596 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645 [335 P.2d 672].)" (Legislature v. Deukmejian (1983) 34 Cal.3d 658, 676 [194 Cal.Rptr. 781, 669 P.2d 17].)

Our concern over potential conflict arises because article XIV, section 4, fn. 11 gives the Legislature "plenary power, unlimited by any provision of [43 Cal.3d 59] this Constitution" over workers' compensation. Although seemingly unrelated to workers' compensation, section 6, as we have shown, would have an indirect, but substantial impact on the ability of the Legislature to make future changes in the existing workers' compensation scheme. Any changes in the system which would increase benefit levels, provide new services, or extend current service might also increase local agencies' costs. Therefore, even though workers' compensation is a program which is intended to provide benefits to all injured or deceased employees and their families, because the change might have some incidental impact on local government costs, the change could be made only if it commanded a supermajority vote of two-thirds of the members of each house of the Legislature. The potential conflict between section 6 and the plenary power over workers' compensation granted to the Legislature by article XIV, section 4 is apparent.

The County of Los Angeles, while recognizing the impact of section 6 on the Legislature's power over workers' compensation, argues that the "plenary power" granted by article XIV, section 4, is power over the substance of workers' compensation legislation, and that this power would be unaffected by article XIII B if the latter is construed to compel reimbursement. The subvention requirement, it is argued, is analogous to other procedural [43 Cal.3d 60] limitations on the Legislature, such as the "single subject rule" (art. IV, § 9), as to which article XIV, section 4, has no application. We do not agree. A constitutional requirement that legislation either exclude employees of local governmental agencies or be adopted by a supermajority vote would do more than simply establish a format or procedure by which legislation is to be enacted. It would place workers' compensation legislation in a special classification of substantive legislation and thereby curtail the power of a majority to enact substantive changes by any procedural means. If section 6 were applicable, therefore, article XIII B would restrict the power of the Legislature over workers' compensation.

The City of Sonoma concedes that so construed article XIII B would restrict the plenary power of the Legislature, and reasons that the provision therefore either effected a pro tanto repeal of article XIV, section 4, or must be accepted as a limitation on the power of the Legislature. We need not accept that conclusion, however, because our construction of section 6 permits the constitutional provisions to be reconciled.

Construing a recently enacted constitutional provision such as section 6 to avoid conflict with, and thus pro tanto repeal of, an earlier provision is also consistent with and reflects the principle applied by this court in Hustedt v. Workers' Comp. Appeals Bd. (1981) 30 Cal.3d 329 [178 Cal.Rptr. 801, 636 P.2d 1139]. There, by coincidence, article XIV, section 4, was the later provision. A statute, enacted pursuant to the plenary power of the Legislature over workers' compensation, gave the Workers' Compensation Appeals Board authority to discipline attorneys who appeared before it. If construed to include a transfer of the authority to discipline attorneys from the Supreme Court to the Legislature, or to delegate that power to the board, article XIV,

section 4, would have conflicted with the constitutional power of this court over attorney discipline and might have violated the separation of powers doctrine. (Art. III, § 3.) The court was thus called upon to determine whether the adoption of article XIV, section 4, granting the Legislature plenary power over workers' compensation effected a pro tanto repeal of the preexisting, exclusive jurisdiction of the Supreme Court over attorneys.

We concluded that there had been no pro tanto repeal because article XIV, section 4, did not give the Legislature the authority to enact the statute. Article XIV, section 4, did not expressly give the Legislature power over attorney discipline, and that power was not integral to or necessary to the establishment of a complete system of workers' compensation. In those circumstances the presumption against implied repeal controlled. "It is well established that the adoption of article XIV, section 4 'effected a repeal pro tanto' of any state constitutional provisions which conflicted with that [43 Cal.3d 61] amendment. (Subsequent Etc. Fund. v. Ind. Acc. Com. (1952) 39 Cal.2d 83, 88 [244 P.2d 889]; Western Indemnity Co. v. Pillsbury (1915) 170 Cal. 686, 695, [151 P. 398].) A pro tanto repeal of conflicting state constitutional provisions removes 'insofar as necessary' any restrictions which would prohibit the realization of the objectives of the new article. (Methodist Hosp. of Sacramento v. Saylor (1971) 5 Cal.3d 685, 691–692 [97 Cal.Rptr. 1, 488 P.2d 161]; cf. City and County of San Francisco v. Workers' Comp. Appeals Bd. (1978) 22 Cal.3d 103, 115–117 [148 Cal.Rptr. 626, 583 P.2d 151].) Thus the question becomes whether the board must have the power to discipline attorneys if the objectives of article XIV, section 4 are to be effectuated. In other words, does the achievement of those objectives compel the modification of a power -- the disciplining of attorneys -- that otherwise rests exclusively with this court?" (Hustedt v. Workers' Comp. Appeals Bd., supra, 30 Cal.3d 329, 343.) We concluded that the ability to discipline attorneys appearing before it was not necessary to the expeditious resolution of workers' claims or the efficient administration of the agency. Thus, the absence of disciplinary power over attorneys would not preclude the board from achieving the objectives of article XIV, section 4, and no pro tanto repeal need be found.

[7] A similar analysis leads to the conclusion here that no pro tanto repeal of article XIV, section 4, was intended or made necessary here by the adoption of section 6. The goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending. (Huntington Park Redevelopment Agency v. Martin (1985) 38 Cal.3d 100, 109–110 [211 Cal.Rptr. 133, 695 P.2d 220].) Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs. Neither of these goals is frustrated by requiring local agencies to provide the same protections to their employees as do private employers. Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage -- costs which all employers must bear -- neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services.

Therefore, since the objectives of article XIII B and section 6 can be achieved in the absence of state subvention for the expense of increases in workers' compensation benefit levels for local agency employees, section 6 did not effect a pro tanto repeal of the Legislature's otherwise plenary power over workers' compensation, a power that does not contemplate that the Legislature rather than the employer must fund the cost or increases in [43 Cal.3d 62] benefits paid to employees of local agencies, or that a statute affecting those benefits must garner a supermajority vote.

Because we conclude that section 6 has no application to legislation that is applicable to employees generally, whether public or private, and affects local agencies only incidentally as employers, we need not reach the question that was the focus of the decision of the Court of Appeal -- whether the state must reimburse localities for state-mandated cost increases which merely reflect adjustments for cost-of-living in existing programs.

V

It follows from our conclusions above, that in each of these cases the plaintiffs' reimbursement claims were properly denied by the State Board of Control. Their petitions for writs of mandate seeking to compel the board to approve the claims

lacked merit and should have been denied by the superior court without the necessity of further proceedings before the board.

In B001713, the Los Angeles case, the Court of Appeal reversed the judgment of the superior court denying the petition. In the B003561, the Sonoma case, the superior court granted partial relief, ordering further proceedings before the board, and the Court of Appeal affirmed that judgment.

The judgment of the Court of Appeal is reversed. Each side shall bear its own costs.

Bird, C. J., Broussard, J., Reynoso, J., Lucas, J., and Panelli, J., concurred.

MOSK, J.

I concur in the result reached by the majority, but I prefer the rationale of the Court of Appeal, i.e., that neither article XIII B, section 6, of the Constitution nor Revenue and Taxation Code sections 2207 and 2231 require state subvention for increased workers' compensation benefits provided by chapter 1042, Statutes of 1980, and chapter 922, Statutes of 1982, but only if the increases do not exceed applicable cost-of-living adjustments because such payments do not result in an increased level of service.

Under the majority theory, the state can order unlimited financial burdens on local units of government without providing the funds to meet those burdens. This may have serious implications in the future, and does violence to the requirement of section 2231, subdivision (a), that the state reimburse local government for "all costs mandated by the state."

In this instance it is clear from legislative history that the Legislature did not intend to mandate additional burdens, but merely to provide a cost-of-living [43 Cal.3d 63] adjustment. I agree with the Court of Appeal that this was permissible.

FN 1. The analysis by the Legislative Analyst advised that the state would be required to "reimburse local governments for the cost of complying with 'state mandates.' 'State mandates' are requirements imposed on local governments by legislation or executive orders." Elsewhere the analysis repeats: "[T]he initiative would establish a requirement that the state provide funds to reimburse local agencies for the cost of complying with state mandates. ...

The one ballot argument which made reference to section 6, referred only to the "new program" provision, stating, "Additionally, this measure [¶] (1) will not allow the state government to force programs on local governments without the state paying for them."

FN 2. The bill was approved by the Governor and filed with the Secretary of State on September 22, 1980. Prior to this, the Assembly gave unanimous consent to a request by the bill's author that his letter to the Speaker stating the intent of the Legislation be printed in the Assembly Journal. The letter stated: (1) that the Assembly Ways and Means Committee had recommended approval without appropriation on grounds that the increases were a result of changes in the cost of living that were not reimbursable under either Revenue and Taxation Code section 2231, or article XIII B; (2) the Senate Finance Committee had rejected a motion to add an appropriation and had approved a motion to concur in amendments of the Conference Committee deleting any appropriation.

Legislative history confirms only that the final version of Assembly Bill No. 2750, as amended in the Assembly on April 16, 1986, contained no appropriation. As introduced on March 4, 1980, with a higher minimum salary of $510 on which to base benefits, an unspecified appropriation was included.

FN 3. The superior court consolidated another action by the County of Butte, Novato Fire Protection District, and the Galt Unified School District with that action. Neither those plaintiffs nor the County of San Bernardino are parties to the appeal.

FN 4. The same section "recognized," however, that a local agency "may pursue any remedies to obtain reimbursement available to it" under the statutes governing reimbursement for state-mandated costs in chapter 3 of the Revenue and Taxation Code, commencing with section 2201.

FN 5. The court concluded that there was no legal or semantic difference in the meaning of the terms and considered the intent or purpose of the two provisions to be identical.

FN 6. The Court of Appeal also considered the expression of legislative intent reflected in the letter by the author of Assembly Bill No. 2750 (see fn. 2, ante). While consideration of that expression of intent may have been proper in construing Assembly Bill No. 2750, we question its relevance to the proper construction of either section 6, adopted by the electorate in the prior year, or of Revenue and Taxation Code section 2207, subdivision (a) enacted in 1975. (Cf. California Employment Stabilization Co. v. Payne (1947) 31 Cal.2d 210, 213–214 [187 P.2d 702].) There is no assurance that the Assembly understood that its approval of printing a statement of intent as to the later bill was also to be read as a statement of intent regarding the earlier statute, and it was not relevant to the intent of the electorate in adopting section 6.

The Court of Appeal also recognized that the history of Assembly Bill No. 2750 and Statutes 1982, chapter 922, which demonstrated the clear intent of the Legislature to omit any appropriation for reimbursement of local government expenditures to pay the higher benefits precluded reliance on reimbursement provisions included in benefit-increase bills passed in earlier years. (See e.g., Stats. 1973, chs. 1021 and 1023.)

FN 7. We infer that the intent of the Court of Appeal was to reverse the order denying the petition for writ of mandate and to order the superior court to grant the petition and remand the matter to the board with directions to set aside its order and reconsider the claim after making the additional findings. (See Code Civ. Proc. § 1094.5, subd. (f).)

FN 8. Pursuant to the 1972 and successor 1973 property tax relief statutes the Legislature had included appropriations in measures which, in the opinion of the Legislature, mandated new programs or increased levels of service in existing programs (see, e.g., Stats. 1973, ch. 1021, § 4, p. 2026; ch. 1022, § 2, p. 2027; Stats. 1976, ch. 1017, § 9, p. 4597) and reimbursement claims filed with the State Board of Control pursuant to Revenue and Taxation Code sections 2218–2218.54 had been honored. When the Legislature fails to include such appropriations there is no judicially enforceable remedy for the statutory violation notwithstanding the command of Revenue and Taxation Code section 2231, subdivision (a) that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207" and the additional command of subdivision (b) that any statute imposing such costs "provide an appropriation therefor." (County of Orange v. Flournoy (1974) 42 Cal.App.3d 908, 913 [117 Cal.Rptr. 224].)

FN 9. Whether a constitutional provision which requires a supermajority vote to enact substantive legislation, as opposed to funding the program, may be validly enacted as a Constitutional amendment rather than through revision of the Constitution is an open question. (See Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 228 [149 Cal.Rptr. 239, 583 P.2d 1281].)

FN 10. The Court of Appeal reached a different conclusion in City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 [203 Cal.Rptr. 258], with respect to a newly enacted law requiring that all public employees be covered by unemployment insurance. Approaching the question as to whether the expense was a "state mandated cost," rather than as whether the provision of an employee benefit was a "program or service" within the meaning of the Constitution, the court concluded that reimbursement was required. To the extent that this decision is inconsistent with our conclusion here, it is disapproved.

FN 11. Section 4: "The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the

course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

"The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

"The Legislature shall have power to provide for the payment of an award to the state in the case of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

"Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed." (Italics added.)

15 Cal.4th 68, 931 P.2d 312, 61 Cal.Rptr.2d 134, Med & Med GD (CCH) P 45,112, 97 Cal. Daily Op. Serv. 1555, 97 Daily Journal D.A.R. 2296
Supreme Court of California

COUNTY OF SAN DIEGO, Cross-complainant and Respondent,
v.
THE STATE OF CALIFORNIA et al., Cross-defendants and Appellants.

No. S046843.
Mar 3, 1997.

SUMMARY

After a county's unsuccessful administrative attempts to obtain reimbursement from the state for expenses incurred through its County Medical Services (CMS) program, and after a class action was filed on behalf of CMS program beneficiaries seeking to enjoin termination of the program, the county filed a cross-complaint and petition for a writ of mandate (Code Civ. Proc., § 1085) against the state, the Commission on State Mandates, and various state officers, to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service). The county alleged that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The trial court found that the state had an obligation to fund the county's CMS program. (Superior Court of San Diego County, No. 634931, Michael I. Greer, * Harrison R. Hollywood, and Judith D. McConnell, Judges.) The Court of Appeal, Fourth Dist., Div. One, No. D018634, affirmed the judgment of the trial court insofar as it provided that Cal. Const., art. XIII B, § 6, required the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required the county to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. The Court of Appeal remanded to the commission to determine the reimbursement amount and appropriate statutory remedies.

The Supreme Court affirmed the judgment of the Court of Appeal insofar as it held that the exclusion of medically indigent adults from Medi-Cal imposed a mandate on the county within the meaning of Cal. Const., art. XIII B, § 6. The Supreme Court reversed the judgment insofar as it held that the state required the county to spend at least $41 million on the CMS ***69** program in fiscal years 1989-1990 and 1990-1991, and remanded the matter to the commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c), Welf. & Inst. Code, §§ 10000, 17000) forced the county to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which the county was entitled. The court held that the trial court had jurisdiction to adjudicate the county's mandate claim, notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The court also held that the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. The court further held that there was a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide the medical care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000, or be struck down as void by the courts. The court also held that the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the commission to determine the amount of any reimbursement due, erred in finding the county had a minimum required expenditure on its CMS program. (Opinion by Chin, J., with

George, C. J., Mosk, and Baxter, JJ., Anderson, J.,* and Aldrich, J.,† concurring. Dissenting opinion by Kennard, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program.
***70** Cal. Const., art. XIII A, and art. XIII B, work in tandem, together restricting California governments' power both to levy and to spend for public purposes. Their goals are to protect residents from excessive taxation and government spending. The purpose of Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ill equipped to assume increased financial responsibilities because of the taxing and spending limitations that Cal. Const., arts. XIII A and XIII B, impose. With certain exceptions, Cal. Const., art. XIII B, § 6, essentially requires the state to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies.

(2a, 2b)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Jurisdiction--With Pending Test Claim.
The trial court had jurisdiction to adjudicate a county's mandate claim asserting the Legislature's transfer to counties of the responsibility for providing health care for medically indigent adults constituted a new program or higher level of service that required state funding under Cal. Const., art. XIII B, § 6 (reimbursement to local government for costs of new state-mandated program), notwithstanding that a test claim was pending in an action by a different county. The trial court should not have proceeded while the other action was pending, since one purpose of the test claim procedure is to avoid multiple proceedings addressing the same claim. However, the error was not jurisdictional; the governing statutes simply vest primary jurisdiction in the court hearing the test claim. The trial court's failure to defer to the primary jurisdiction of the other court did not prejudice the state. The trial court did not usurp the Commission on State Mandates' authority, since the commission had exercised its authority in the pending action. Since the pending action was settled, no multiple decisions resulted. Nor did lack of an administrative record prejudice the state, since determining whether a statute imposes a state mandate is an issue of law. Also, attempts to seek relief from the commission would have been futile, thus triggering the futility exception to the exhaustion requirement, given that the commission rejected the other county's claim.

(3)
Administrative Law § 99--Judicial Review and Relief--Administrative Mandamus--Jurisdiction--As Derived From Constitution.
The power of superior courts to perform mandamus review of administrative decisions derives in part from Cal. Const., art. VI, § 10. ***71** That section gives the Supreme Court, Courts of Appeal, and superior courts "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus." The jurisdiction thus vested may not lightly be deemed to have been destroyed. While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication.

(4)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program. The state asserted the source of the county's obligation to provide such care was Welf. & Inst. Code, § 17000, enacted in 1965, rather than the 1982 legislation, and since Cal. Const., art. XIII B, § 6, did not apply to "mandates enacted prior to January 1, 1975," there was no reimbursable mandate. However, Welf. & Inst. Code, § 17000, requires a county to support indigent persons only in the event they are not assisted by other sources. To the extent care was provided

prior to the 1982 legislation, the county's obligation had been reduced. Also, the state's assumption of full funding responsibility prior to the 1982 legislation was not intended to be temporary. The 1978 legislation that assumed funding responsibility was limited to one year, but similar legislation in 1979 contained no such limiting language. Although the state asserted the health care program was never operated by the state, the Legislature, in adopting Medi-Cal, shifted responsibility for indigent medical care from counties to the state. Medi-Cal permitted county boards of supervisors to prescribe rules (Welf. & Inst. Code, § 14000.2), and Medi-Cal was administered by state departments and agencies.

[See 9 Witkin, Summary of Cal. Law (9th ed. 1989) Taxation, § 123.]

(5a, 5b)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards-- ***72** Eligibility.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care. While Welf. & Inst. Code, § 17001, confers discretion on counties to provide general assistance, there are limits to this discretion. The standards must meet the objectives of Welf. & Inst. Code, § 17000 (counties shall relieve and support "indigent persons"), or be struck down as void by the courts. As to eligibility standards, counties must provide care to all adult medically indigent persons (MIP's). Although Welf. & Inst. Code, § 17000, does not define "indigent persons," the 1982 legislation made clear that adult MIP's were within this category. The coverage history of Medi-Cal demonstrates the Legislature has always viewed all adult MIP's as "indigent persons" under Welf. & Inst. Code, § 17000. The Attorney General also opined that the 1971 inclusion of MIP's in Medi-Cal did not alter the duty of counties to provide care to indigents not eligible for Medi-Cal, and this opinion was entitled to considerable weight. Absent controlling authority, the opinion was persuasive since it was presumed the Legislature was cognizant of the Attorney General's construction and would have taken corrective action if it disagreed. (Disapproving *Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944 [203 Cal.Rptr. 184] insofar as it holds that a county's responsibility under Welf. & Inst. Code, § 17000, extends only to indigents as defined by the county's board of supervisors, and suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of Welf. & Inst. Code, § 17000, but do not qualify for Medi-Cal.)

(6)
Public Aid and Welfare § 4--County Assistance--Counties' Discretion.
Counties may exercise their discretion under Welf. & Inst. Code, § 17001 (county board of supervisors or authorized agency shall adopt standards of aid and care for indigent and dependent poor), only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose (Gov. Code, § 11374). Despite the counties' statutory discretion, courts have consistently invalidated county welfare regulations that fail to meet statutory requirements. ***73**

(7)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Existence of Mandate--Discretion to Set Standards--Service.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), the Legislature's 1982 transfer to counties of responsibility for providing health care for medically indigent adults mandated a reimbursable new program, despite the state's assertion that the county had discretion to refuse to provide such care by setting its own service standards. Welf. & Inst. Code, § 17000, mandates that medical care be provided to indigents, and Welf. & Inst. Code, § 10000, requires that such care be provided promptly and humanely. There is no discretion concerning whether to provide such care. Courts construing Welf. & Inst. Code, § 17000, have

held it imposes a mandatory duty upon counties to provide medically necessary care, not just emergency care, and it has been interpreted to impose a minimum standard of care. Until its repeal in 1992, Health & Saf. Code, § 1442.5, former subd. (c), also spoke to the level of services that counties had to provide under Welf. & Inst. Code, § 17000, requiring that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county. (Disapproving *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706] to the extent it held that Health & Saf. Code, § 1442.5, former subd. (c), was merely a limitation on a county's ability to close facilities or reduce services provided in those facilities, and was irrelevant absent a claim that a county facility was closed or that services in the county were reduced.)

(8)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Minimum Required Expenditure.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), in which the trial court found that the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults mandated a reimbursable new program entitling the county to reimbursement, the Court of Appeal, in reversing the damages portion of the trial court's judgment and remanding to the Commission on State Mandates to determine the amount of any reimbursement due, erred in finding the county ***74** had a minimum required expenditure on its County Medical Services (CMS) program. The Court of Appeal relied on Welf. & Inst. Code, former § 16990, subd. (a), which set forth the financial maintenance-of-effort requirement for counties that received California Healthcare for the Indigent Program (CHIP) funding. However, counties that chose to seek CHIP funds did so voluntarily. Thus, Welf. & Inst. Code, former § 16990, subd. (a), did not mandate a minimum funding requirement. Nor did Welf. & Inst. Code, former § 16991, subd. (a)(5), establish a minimum financial obligation. That statute required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its allocation from various sources was less than the funding it received under Welf. & Inst. Code, § 16703, for 1988-1989. Nothing about this requirement imposed on the county a minimum funding requirement.

(9)
State of California § 12--Fiscal Matters--Appropriations--Reimbursement to Local Government for State-mandated Program--County's Reimbursement for Cost of Health Care to Indigent Adults--Proper Mandamus Proceeding:Mandamus and Prohibition § 23--Claim Against Commission on State Mandates.
In a county's action against the state to determine the county's rights under Cal. Const., art. XIII B, § 6 (reimbursement to local government for state-mandated new program or higher level of service), after the Commission on State Mandates indicated the Legislature's 1982 transfer to counties of the responsibility for providing health care for medically indigent adults did not mandate a reimbursable new program, a mandamus proceeding under Code Civ. Proc., § 1085, was not an improper vehicle for challenging the commission's position. Mandamus under Code Civ. Proc., § 1094.5, commonly denominated "administrative" mandamus, is mandamus still. The full panoply of rules applicable to ordinary mandamus applies to administrative mandamus proceedings, except where they are modified by statute. Where entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding under Code Civ. Proc., § 1085, as one brought under Code Civ. Proc., § 1094.5, and should overrule a demurrer asserting that the wrong mandamus statute has been invoked. In any event, the determination whether the statutes at issue established a mandate under Cal. Const., art. XIII B, § 6, was a question of law. Where a purely legal question is at issue, courts exercise independent judgment, no matter whether the issue arises by traditional or administrative mandate. ***75**

COUNSEL
Daniel E. Lungren, Attorney General, Charlton G. Holland III, Assistant Attorney General, John H. Sanders and Richard T. Waldow, Deputy Attorneys General, for Cross-defendants and Appellants.
Lloyd M. Harmon, Jr., County Counsel, John J. Sansone, Acting County Counsel, Diane Bardsley, Chief Deputy County Counsel, Valerie Tehan and Ian Fan, Deputy County Counsel, for Cross-complainant and Respondent.

CHIN, J.

Section 6 of article XIII B of the California Constitution (section 6) requires the State of California (state), subject

to certain exceptions, to "provide a subvention of funds to reimburse" local governments "[w]henever the Legislature or any state agency mandates a new program or higher level of service ...." In this action, the County of San Diego (San Diego or the County) seeks reimbursement under section 6 from the state for the costs of providing health care services to certain adults who formerly received medical care under the California Medical Assistance Program (Medi-Cal) (see Welf. & Inst. Code, § 14063) [1] because they were medically indigent, i.e., they had insufficient financial resources to pay for their own medical care. In 1979, when the electorate adopted section 6, the state provided Medi-Cal coverage to these medically indigent adults without requiring financial contributions from counties. Effective January 1, 1983, the Legislature excluded this population from Medi-Cal. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Since that date, San Diego has provided medical care to these individuals with varying levels of state financial assistance.

To resolve San Diego's claim, we must determine whether the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" on San Diego within the meaning of section 6. The Commission on State Mandates (Commission), which the Legislature created to determine claims under section 6, has ruled that section 6 does not apply to the Legislature's action and has rejected reimbursement claims like San Diego's. (See *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 330, fn. 2 [285 Cal.Rptr. 66, 814 P.2d 1308] (*Kinlaw*).) The trial court and Court of Appeal in this case disagreed with the Commission, finding that San Diego was entitled to reimbursement. The state seeks ***76** reversal of this finding. It also argues that San Diego's failure to follow statutory procedures deprived the courts of jurisdiction to hear its claim. We reject the state's jurisdictional argument and affirm the finding that the Legislature's exclusion of medically indigent adults from Medi-Cal "mandate[d] a new program or higher level of service" within the meaning of section 6. Accordingly, we remand the matter to the Commission to determine the amount of reimbursement, if any, due San Diego under the governing statutes.

I. Funding of Indigent Medical Care

Before the start of Medi-Cal, "the indigent in California were provided health care services through a variety of different programs and institutions." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3 (Preliminary Report).) County hospitals "provided a wide range of inpatient and outpatient hospital services to all persons who met county indigency requirements whether or not they were public assistance recipients. The major responsibility for supporting county hospitals rested upon the counties, financed primarily through property taxes, with minor contributions from" other sources. (*Id.* at p. 4.)

Medi-Cal, which began operating March 1, 1966, established "a program of basic and extended health care services for recipients of public assistance and for medically indigent persons." (*Morris v. Williams* (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697] (*Morris*); *id.* at p. 740; see also Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 103.) It "represent[ed] California's implementation of the federal Medicaid program (42 U.S.C. §§ 1396-1396v), through which the federal government provide[d] financial assistance to states so that they [might] furnish medical care to qualified indigent persons. [Citation.]" (*Robert F. Kennedy Medical Center v. Belshé* (1996) 13 Cal.4th 748, 751 [55 Cal.Rptr.2d 107, 919 P.2d 721] (*Belshé*).) "[B]y meeting the requirements of federal law," Medi-Cal "qualif [ied] California for the receipt of federal funds made available under title XIX of the Social Security Act." (*Morris*, *supra*, 67 Cal.2d at p. 738.) "Title [XIX] permitted the combination of the major governmental health care systems which provided care for the indigent into a single system financed by the state and federal governments. By 1975, this system, at least as originally proposed, would provide a wide range of health care services for all those who [were] indigent regardless of whether they [were] public assistance recipients ...." (Preliminary Rep., *supra*, at p. 4; see also Act of July 30, 1965, Pub.L. No. 89-97, § 121(a), 79 Stat. 286, reprinted in 1965 U.S. Code ***77** Cong. & Admin. News, p. 378 [states must make effort to liberalize eligibility requirements "with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources"].) [2]

However, eligibility for Medi-Cal was initially limited only to persons linked to a federal categorical aid program by age (at least 65), blindness, disability, or membership in a family with dependent children within the meaning of the Aid to Families with Dependent Children program (AFDC). (See Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of

1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.) pp. 548, 550 (1971 Legislative Analyst's Report).) Individuals possessing one of these characteristics (categorically linked persons) received full benefits if they actually received public assistance payments. (*Id.* at p. 550.) Lesser benefits were available to categorically linked persons who were only medically indigent, i.e., their income and resources, although rendering them ineligible for cash aid, were "not sufficient to meet the cost of health care." (*Morris*, *supra*, 67 Cal.2d at p. 750; see also 1971 Legis. Analyst's Rep., *supra*, at pp. 548, 550; Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, pp. 105-106.)

Individuals not linked to a federal categorical aid program (non-categorically linked persons) were ineligible for Medi-Cal, regardless of their means. Thus, "a group of citizens, not covered by Medi-Cal and yet unable to afford medical care, remained the responsibility of" the counties. (*County of Santa Clara v. Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629] (*Hall*).) In establishing Medi-Cal, the Legislature expressly recognized this fact by enacting former section 14108.5, which provided: "The Legislature hereby declares its concern with the problems which will be facing the counties with respect to the medical care of indigent persons who are not covered [by Medi-Cal] ... and ... whose medical care must be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116.) The Legislature directed the Health Review and Program Council "to study this problem and report its findings to the Legislature no later than March 1, 1967." (*Ibid.*)

Moreover, although it required counties to contribute to the costs of Medi-Cal, the Legislature established a method for determining the amount of their contributions that would "leave them with []sufficient funds to provide hospital care for those persons not eligible for Medi-Cal." (*Hall*, *supra*, 23 Cal.App.3d at p. 1061, fn. omitted.) Former section 14150.1, ***78** which was known as the "county option" or the "option plan," required a county "to pay the state a sum equal to 100 percent of the county's health care costs (which included both linked and nonlinked individuals) provided in the 1964-1965 fiscal year, with an adjustment for population increase; in return the state would pay the county's entire cost of medical care."[3] (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 581 [159 Cal.Rptr. 1] (*Lackner*).) Under the county option, "the state agreed to assume all county health care costs ... in excess of" the county's payment. (*Id.* at p. 586.) It "made no distinction between 'linked' and 'nonlinked' persons," and "simply guaranteed a medical cost ceiling to counties electing to come within the option plan." (*Ibid.*) "Any difference in actual operating costs and the limit set by the option provision [was] assumed entirely by the state." (Preliminary Rep., *supra*, at p. 10, fn. 2.) Thus, the county option "guarantee[d] state participation in the cost of care for medically indigent persons who [were] not otherwise covered by the basic Medi-Cal program or other repayment programs."[4] (1971 Legis. Analyst's Rep., *supra*, at p. 549.)

Primarily through the county option, Medi-Cal caused a "significant shift in financing of health care from the counties to the state and federal government.... During the first 28 months of the program the state ... paid approximately $76 million for care of non-Medi-Cal indigents in county hospitals." (Preliminary Rep., *supra*, at p. 31.) These state funds paid "costs that would otherwise have been borne by counties through increases in property taxes." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1974-1975 Budget Bill, Sen. Bill No. 1525 (1973-1974 Reg. Sess.) p. 626 (1974 Legislative Analyst's Report).) "[F]aced with escalating Medi-Cal costs, the Legislature in 1967 imposed strict guidelines on reimbursing counties electing to come under the 'option' plan. ([Former] § 14150.2.) Pursuant to subdivision (c) of [former] section 14150.2, the state imposed a limit on its obligation to pay for medical services to nonlinked persons ***79** served by a county within the 'option' plan." (*Lackner*, *supra*, 97 Cal.App.3d at p. 589; see also Stats. 1967, ch. 104, § 3, p. 1019; Stats. 1969, ch. 21, § 57, pp. 106-107; 1974 Legis. Analyst's Rep., *supra*, at p. 626.)

In 1971, the Legislature substantially revised Medi-Cal. It extended coverage to certain noncategorically linked minors and adults "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83; see Stats. 1971, ch. 577, §§ 12, 23, pp. 1110-1111, 1115.) These medically indigent individuals met "the income and resource requirements for aid under [AFDC] but [did] not otherwise qualify[] as a public assistance recipient." (56 Ops.Cal.Atty.Gen. 568, 569 (1973).) The Legislature anticipated that this eligibility expansion would bring "approximately 800,000 additional medically needy Californians" into Medi-Cal. (Stats. 1971, ch. 577, § 56, p. 1136.) The 1971 legislation referred to these individuals as " '[n]oncategorically related needy person [s].' " (Stats. 1971, ch. 577, § 23, p. 1115.) Subsequent legislation designated them as "medically indigent person[s]" (MIP's) and provided

them coverage under former section 14005.4. (Stats. 1976, ch. 126, § 7, p. 200; *id.* at § 20, p. 204.)

The 1971 legislation also established a new method for determining each county's financial contribution to Medi-Cal. The Legislature eliminated the county option by repealing former section 14150.1 and enacting former section 14150. That section specified (by amount) each county's share of Medi-Cal costs for the 1972-1973 fiscal year and set forth a formula for increasing the share in subsequent years based on the taxable assessed value of certain property. (Stats. 1971, ch. 577, §§ 41, 42, pp. 1131-1133.)

For the 1978-1979 fiscal year, the state assumed each county's share of Medi-Cal costs under former section 14150. (Stats. 1978, ch. 292, § 33, p. 610.) In July 1979, the Legislature repealed former section 14150 altogether, thereby eliminating the counties' responsibility to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 74, p. 1043.) Thus, in November 1979, when the electorate adopted section 6, "the state was funding Medi-Cal coverage for [MIP's] without requiring any county financial contribution." (*Kinlaw*, *supra*, 54 Cal.3d at p. 329.) The state continued to provide full funding for MIP medical care through 1982.

In 1982, the Legislature passed two Medi-Cal reform bills that, as of January 1, 1983, excluded from Medi-Cal most adults who had been eligible ***80** under the MIP category (adult MIP's or Medically Indigent Adults).[5] (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357; *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706] (*Cooke*).) As part of excluding this population from Medi-Cal, the Legislature created the Medically Indigent Services Account (MISA) as a mechanism for "transfer[ing] [state] funds to the counties for the provision of health care services." (Stats. 1982, ch. 1594, § 86, p. 6357.) Through MISA, the state annually allocated funds to counties based on "the average amount expended" during the previous three fiscal years on Medi-Cal services for county residents who had been eligible as MIP's. (Stats. 1982, ch. 1594, § 69, p. 6345.) The Legislature directed that MISA funds "be consolidated with existing county health services funds in order to provide health services to low-income persons and other persons not eligible for the Medi-Cal program." (Stats. 1982, ch. 1594, § 86, p. 6357.) It further provided: "Any person whose income and resources meet the income and resource criteria for certification for [Medi-Cal] services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.)

After passage of the 1982 legislation, San Diego established a county medical services (CMS) program to provide medical care to adult MIP's. According to San Diego, between 1983 and June 1989, the state fully funded San Diego's CMS program through MISA. However, for fiscal years 1989-1990 and 1990-1991, the state only partially funded San Diego's CMS program. For example, San Diego asserts that, in fiscal year 1990-1991, it exhausted state-provided MISA funds by December 24, 1990. Faced with this shortfall, San Diego's board of supervisors voted in February 1991 to terminate the CMS program unless the state agreed by March 8 to provide full funding for the 1990-1991 fiscal year. After the state refused to provide additional funding, San Diego notified affected individuals and medical service providers that it would terminate the CMS program at midnight on March 19, 1991. The response to the County's notification ultimately resulted in the unfunded mandate claim now before us.

II. Unfunded Mandates

Through adoption of Proposition 13 in 1978, the voters added article XIII A to the California Constitution, which "imposes a limit on the power of state and local governments to adopt and levy taxes. [Citation.]" (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486 [***81** 280 Cal.Rptr. 92, 808 P.2d 235] (*County of Fresno*).) The next year, the voters added article XIII B to the Constitution, which "impose[s] a complementary limit on the rate of growth in governmental spending." (*San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 574 [7 Cal.Rptr.2d 245, 828 P.2d 147].) (1) These two constitutional articles "work in tandem, together restricting California governments' power both to levy and to spend for public purposes." (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].) Their goals are "to protect residents from excessive taxation and government spending. [Citation.]" (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*).)

California Constitution, article XIII B includes section 6, which is the constitutional provision at issue here. It

provides in relevant part: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] ... [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments. (*County of Fresno*, *supra*, 53 Cal.3d at p. 487.) Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are "ill equipped" to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose. (*County of Fresno*, *supra*, 53 Cal.3d at p. 487; *County of Los Angeles*, *supra*, 43 Cal.3d at p. 61.) With certain exceptions, section 6 "[e]ssentially" requires the state "to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577 [15 Cal.Rptr.2d 547].)

In 1984, the Legislature created a statutory procedure for determining whether a statute imposes state-mandated costs on a local agency within the meaning of section 6. (Gov. Code, § 17500 et seq.). The local agency must file a test claim with the Commission, which, after a public hearing, decides whether the statute mandates a new program or increased level of service. (Gov. Code, §§ 17521, 17551, 17555.) If the Commission finds a claim to be reimbursable, it must determine the amount of reimbursement. (Gov. Code, § 17557.) The local agency must then follow certain statutory procedures to ***82** obtain reimbursement. (Gov. Code, § 17558 et seq.) If the Legislature refuses to appropriate money for a reimbursable mandate, the local agency may file "an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Gov. Code, § 17612, subd. (c).) If the Commission finds no reimbursable mandate, the local agency may challenge this finding by administrative mandate proceedings under section 1094.5 of the Code of Civil Procedure. (Gov. Code, § 17559.) Government Code section 17552 declares that these provisions "provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state as required by Section 6 ...."

III. Administrative and Judicial Proceedings

A. *The Los Angeles Action*

On November 23, 1987, the County of Los Angeles (Los Angeles) filed a claim (the Los Angeles action) with the Commission asserting that the exclusion of adult MIP's from Medi-Cal constituted a reimbursable mandate under section 6. (*Kinlaw*, *supra*, 54 Cal.3d at p. 330, fn. 2.) Alameda County subsequently filed a claim on November 30, 1987, but the Commission rejected it because of the pending Los Angeles action. (*Id.* at p. 331, fn. 4.) Los Angeles refused to permit Alameda County to join as a claimant, but permitted San Bernardino County to join. (*Ibid.*)

In April 1989, the Commission rejected the Los Angeles claim, finding no reimbursable mandate.[6] (*Kinlaw*, *supra*, 54 Cal.3d at p. 330, fn. 2.) It found that the 1982 legislation did not impose on counties a new program or a higher level of service for an existing program because counties had a "pre-existing duty" to provide medical care to the medically indigent under section 17000. That section provides in relevant part: "Every county ... shall relieve and support all incompetent, poor, indigent persons ... lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Section 17000 did not impose a reimbursable mandate under section 6, the Commission further reasoned, because it "was enacted prior to January 1, 1975 ...." Finally, the Commission found no mandate because the 1982 legislation "neither establish[ed] the level of care to be provided nor ... define[d] the class of persons determined to be eligible for medical care since these criteria were established by boards of supervisors" pursuant to section 17001.

On March 20, 1990, the Los Angeles Superior Court filed a judgment reversing the Commission's decision and directing issuance of a peremptory ***83** writ of mandate. On April 16, 1990, the Commission and the state filed an appeal in the Second District Court of Appeal. (*County of Los Angeles v. State of California*, No. B049625.)[7] In early 1992, the parties to the Los Angeles action agreed to settle their dispute and to seek dismissal. In April 1992, after learning of this agreement, San Diego sought to intervene. Explaining that

it had been waiting for resolution of the action, San Diego requested that the Court of Appeal deny the dismissal request and add (or substitute in) the County as a party. The Court of Appeal did not respond. On December 15, 1992, the parties to the Los Angeles action entered into a settlement agreement that provided for vacation of the superior court judgment and dismissal of the appeal and superior court action. Consistent with the settlement agreement, on December 29, 1992, the Court of Appeal filed an order vacating the superior court judgment, dismissing the appeal, and instructing the superior court to dismiss the action without prejudice on remand. [8]

B. *The San Diego Action*

1. *Administrative Attempts to Obtain Reimbursement*

On March 13, 1991, San Diego submitted an invoice to the State Controller seeking reimbursement of its uncompensated expenditures on the CMS program for fiscal year 1989-1990. The Controller is a member of the Commission. (Gov. Code, § 17525.) On April 12, the Controller returned the invoice "without action," stating that "[n]o appropriation has been given to this office to allow for reimbursement" of medical costs for adult MIP's and noting that litigation was pending regarding the state's reimbursement obligation. On December 18, 1991, San Diego submitted a similar invoice for the 1990-1991 fiscal year. The state has not acted regarding this second invoice. ***84**

2. *Court Proceedings*

Responding to San Diego's notice of intent to terminate the CMS program, on March 11, 1991, the Legal Aid Society of San Diego filed a class action on behalf of CMS program beneficiaries seeking to enjoin termination of the program. The trial court later issued a preliminary injunction prohibiting San Diego "from taking any action to reduce or terminate" the CMS program.

On March 15, 1991, San Diego filed a cross-complaint and petition for writ of mandate under Code of Civil Procedure section 1085 against the state, the Commission, and various state officers. [9] The cross-complaint alleged that, by excluding adult MIP's from Medi-Cal and transferring responsibility for their medical care to counties, the state had mandated a new program and higher level of service within the meaning of section 6. The cross-complaint further alleged that the state therefore had a duty under section 6 to reimburse San Diego for the entire cost of its CMS program, and that the state had failed to perform its duty.

Proceeding from these initial allegations, the cross-complaint alleged causes of action for indemnification, declaratory and injunctive relief, reimbursement and damages, and writ of mandate. In its first declaratory relief claim, San Diego alleged (on information and belief) that the state contended the CMS program was a nonreimbursable, county obligation. In its claim for reimbursement, San Diego alleged (again on information and belief) that the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement from the State for the costs of such programs." "Under these circumstances," San Diego asserted, "denial of the County's claim by the Commission ... is virtually certain and further administrative pursuit of this claim would be a futile act."

For relief, San Diego requested a judgment declaring the following: (1) that the state must fully reimburse San Diego if it "is compelled to provide any CMS Program services to plaintiffs ... after March 19, 1991"; (2) that section 6 requires the state "to fully fund the CMS Program" (or, alternatively, that the CMS program is discretionary); (3) that the state must pay San Diego for all of its unreimbursed costs for the CMS program during the ***85** 1989-1990 and 1990-1991 fiscal years; and (4) that the state shall assume responsibility for operating any court-ordered continuation of the CMS program. San Diego also requested that the court issue a writ of mandamus requiring the state to fulfill its reimbursement obligation. Finally, San Diego requested issuance of preliminary and permanent injunctions to ensure that the state fulfilled its obligations to the County.

In April 1991, San Diego determined that it could continue operating the CMS program using previously unavailable general fund revenues. Accordingly, San Diego and plaintiffs settled their dispute, and plaintiffs dismissed their complaint.

The matter proceeded solely on San Diego's cross-complaint. The court issued a preliminary injunction and alternative writ in May 1991. At a hearing on June 25, 1991, the court found that the state had an obligation to fund San Diego's CMS program, granted San Diego's request for a writ of mandate, and scheduled an evidentiary hearing to determine damages and remedies. On July 1, 1991, it issued an order reflecting this ruling and granting a peremptory writ of mandate. The writ did not issue, however, because of the pending hearing to determine damages. In December 1992, after an extensive evidentiary hearing and posthearing proceedings on the claim

for a peremptory writ of mandate, the court issued a judgment confirming its jurisdiction to determine San Diego's claim, finding that section 6 required the state to fund the entire cost of San Diego's CMS program, determining the amount that the state owed San Diego for fiscal years 1989-1990 and 1990-1991, identifying funds available to the state to satisfy the judgment, and ordering issuance of a peremptory writ of mandate. [10] The court also issued a peremptory writ of mandate directing the state and various state officers to comply with the judgment.

The Court of Appeal affirmed the judgment insofar as it provided that section 6 requires the state to fund the CMS program. The Court of Appeal also affirmed the trial court's finding that the state had required San Diego to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. However, the Court of Appeal reversed those portions of the judgment determining the final reimbursement amount and specifying the state funds from which the state was to satisfy the judgment. It remanded the matter to the Commission to determine the reimbursement amount and appropriate statutory remedies. We then granted the state's petition for review.

IV. Superior Court Jurisdiction

(2a) Before reaching the merits of the appeal, we must address the state's assertion that the superior court lacked jurisdiction to hear San ***86** Diego's mandate claim. According to the state, in *Kinlaw*, *supra*, 54 Cal.3d 326, we "unequivocally held that the orderly determination of [unfunded] mandate questions demands that only one claim on any particular alleged mandate be entertained by the courts at any given time." Thus, if a test claim is pending, "other potential claims must be held in abeyance ...." Applying this principle, the state asserts that, since "the test claim litigation was pending" in the Los Angeles action when San Diego filed its cross-complaint seeking mandamus relief, "the superior court lacked jurisdiction from the outset, and the resulting judgment is a nullity. That defect cannot be cured by the settlement of the test claim, which occurred after judgment was entered herein."

In *Kinlaw*, we held that individual taxpayers and recipients of government benefits lack standing to enforce section 6 because the applicable administrative procedures, which "are the exclusive means" for determining and enforcing the state's section 6 obligations, "are available only to local agencies and school districts directly affected by a state mandate ...." (*Kinlaw*, *supra*, 54 Cal.3d at p. 328.) In reaching this conclusion, we explained that the reimbursement right under section 6 "is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services." (*Id.* at p. 334.) We concluded that "[n]either public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues." (*Id.* at p. 335.)

In finding that individuals do not have standing to enforce the section 6 rights of local agencies, we made several observations in *Kinlaw* pertinent to operation of the statutory process as it applies to entities that do have standing. Citing Government Code section 17500, we explained that "the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6 ... because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process." (*Kinlaw*, *supra*, 54 Cal.3d at p. 331.) Thus, the governing statutes "establish[] procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created." (*Id.* at p. 333.) Specifically, "[t]he legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies ...." (*Id.* at p. 331.) Describing the Commission's application of the test-claim procedure to claims regarding exclusion of adult MIP's from Medi-Cal, we observed: "The test claim by the County of Los Angeles was filed prior to that ***87** proposed by Alameda County. The Alameda County claim was rejected for that reason. (See [Gov. Code,] § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the [adult MIP exclusion] issues .... Los Angeles County declined a request from Alameda County that it be included in the test claim ...." (*Id.* at p. 331, fn. 4.)

Consistent with our observations in *Kinlaw*, we here agree with the state that the trial court should not have proceeded to resolve San Diego's claim for reimbursement under section 6 while the Los Angeles action was pending. A contrary conclusion would undermine one of "the express purpose[s]" of the statutory procedure: to "avoid[] multiple proceedings ...

addressing the same claim that a reimbursable state mandate has been created." (*Kinlaw*, *supra*, 54 Cal.3d at p. 333.)

(3) However, we reject the state's assertion that the error was jurisdictional. The power of superior courts to perform mandamus review of administrative decisions derives in part from article VI, section 10 of the California Constitution. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 138 [93 Cal.Rptr. 234, 481 P.2d 242]; *Lipari v. Department of Motor Vehicles* (1993) 16 Cal.App.4th 667, 672 [20 Cal.Rptr.2d 246].) That section gives "[t]he Supreme Court, courts of appeal, [and] superior courts ... original jurisdiction in proceedings for extraordinary relief in the nature of mandamus ...." (Cal. Const., art. VI, § 10.) "The jurisdiction thus vested may not lightly be deemed to have been destroyed." (*Garrison v. Rourke* (1948) 32 Cal.2d 430, 435 [196 P.2d 884], overruled on another ground in *Keane v. Smith* (1971) 4 Cal.3d 932, 939 [95 Cal.Rptr. 197, 485 P.2d 261].) "While the courts are subject to reasonable statutory regulation of procedure and other matters, they will maintain their constitutional powers in order effectively to function as a separate department of government. [Citations.] Consequently an intent to defeat the exercise of the court's jurisdiction will not be supplied by implication." (*Garrison*, *supra*, at p. 436.) (2b) Here, we find no statutory provision that either "expressly provide[s]" (*id.* at p. 435) or otherwise "clearly intend[s]" (*id.* at p. 436) that the Legislature intended to divest all courts other than the court hearing the test claim of their mandamus jurisdiction.

Rather, following *Dowdall v. Superior Court* (1920) 183 Cal. 348 [191 P. 685] (*Dowdall*), we interpret the governing statutes as simply vesting primary jurisdiction in the court hearing the test claim. In *Dowdall*, we determined the jurisdictional effect of Code of Civil Procedure former section 1699 on actions to settle the account of trustees of a testamentary trust. Code of Civil Procedure former section 1699 provided in part: "Where any trust ***88** has been created by or under any will to continue after distribution, the Superior Court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust." (Stats. 1889, ch. 228, § 1, p. 337.) We explained that, under this section, "the superior court, sitting in probate upon the distribution of an estate wherein the will creates a trust, retain[ed] jurisdiction of the estate for the purpose of the settlement of the accounts under the trust." (*Dowdall*, *supra*, 183 Cal. at p. 353.) However, we further observed that "the superior court of each county in the state has general jurisdiction in equity to settle trustees' accounts and to entertain actions for injunctions. This jurisdiction is, in a sense, concurrent with that of the superior court, which, by virtue of the decree of distribution, has jurisdiction of a trust created by will. The latter, however, is the primary jurisdiction, and if a bill in equity is filed in any other superior court for the purpose of settling the account of such trustee, that court, upon being informed of the jurisdiction of the court in probate and that an account is to be or has been filed therein for settlement, should postpone the proceeding in its own case and allow the account to be settled by the court having primary jurisdiction thereof." (*Ibid.*)

Similarly, we conclude that, under the statutes governing determination of unfunded mandate claims, the court hearing the test claim has primary jurisdiction. Thus, if an action asserting the same unfunded mandate claim is filed in any other superior court, that court, upon being informed of the pending test claim, should postpone the proceeding before it and allow the court having primary jurisdiction to determine the test claim.

However, a court's erroneous refusal to stay further proceedings does not render those further proceedings void for lack of jurisdiction. As we explained in *Dowdall*, a court that refuses to defer to another court's primary jurisdiction "is not without jurisdiction." (*Dowdall*, *supra*, 183 Cal. at p. 353.) Accordingly, notwithstanding pendency of the Los Angeles action, the trial court here did not lack jurisdiction to determine San Diego's mandamus petition. (See *Collins v. Ramish* (1920) 182 Cal. 360, 366-369 [188 P. 550] [although trial court erred in refusing to abate action because of former action pending, new trial was not warranted on issues that the trial court correctly decided]; *People* ex rel. *Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 772 [25 Cal.Rptr.2d 192] (*Garamendi*) ["rule of exclusive concurrent jurisdiction is not 'jurisdictional' in the sense that failure to comply renders subsequent proceedings void"]; *Stearns v. Los Angeles City School Dist.* (1966) 244 Cal.App.2d 696, 718 [53 Cal.Rptr. 482, 21 A.L.R.3d 164] [where trial court errs in failing to stay proceedings in ***89** deference to jurisdiction of another court, reversal would be frivolous absent errors regarding the merits].) [11]

The trial court's failure to defer to the primary jurisdiction of the court hearing the Los Angeles action did not prejudice the state. Contrary to the state's assertion, the trial court did not "usurp" the Commission's "authority to determine, in the first place, whether or not legislation creates a mandate." The Commission had already exercised that authority in the Los Angeles action. Moreover, given the settlement of the Los Angeles action, which included vacating the judgment in that action, the trial court's exercise of jurisdiction here did not result in one of the principal harms that the statutory procedure seeks to prevent: multiple decisions regarding an unfunded mandate question. Finally, the lack of an administrative record specifically relating to San Diego's claim did not prejudice the state because the threshold determination of whether a statute imposes a state mandate is an issue of law. (*County of Fresno v. Lehman* (1991) 229 Cal.App.3d 340, 347 [280 Cal.Rptr. 310].) To the extent that an administrative record was necessary, the record developed in the Los Angeles action could have been submitted to the trial court. [12] (See *Los Angeles Unified School Dist. v. State of California* (1988) 199 Cal.App.3d 686, 689 [245 Cal.Rptr. 140].)

We also find that, on the facts of this case, San Diego's failure to submit a test claim to the Commission before seeking judicial relief did not affect the superior court's jurisdiction. Ordinarily, counties seeking to pursue an unfunded mandate claim under section 6 must exhaust their administrative remedies. (*Central Delta Water Agency v. State Water Resources Control Bd.* (1993) 17 Cal.App.4th 621, 640 [21 Cal.Rptr.2d 453]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 73-77 [222 Cal.Rptr. 750] (*County of Contra Costa*).) However, counties may pursue section 6 claims in superior court without first resorting to administrative remedies if they "can establish an exception to" the exhaustion requirement. (*County of Contra Costa*, *supra*, 177 Cal.App.3d at p. 77.) The futility exception to the exhaustion requirement applies if a county can "state with assurance that the [Commission] would rule adversely in its own particular case. [Citations.]" (*Lindeleaf v. Agricultural Labor Relations Bd.* (1986) 41 Cal.3d 861, 870 [226 Cal.Rptr. 119, 718 P.2d 106]; see also *County of Contra Costa*, *supra*, 177 Cal.App.3d at pp. 77-78.) ***90**

We agree with the trial court and the Court of Appeal that the futility exception applied in this case. As we have previously noted, San Diego invoked this exception by alleging in its cross-complaint that the Commission's denial of its claim was "virtually certain" because the Commission had "previously denied the claims of other counties, ruling that county medical care programs for [adult MIP's] are not state-mandated and, therefore, counties are not entitled to reimbursement ...." Given that the Commission rejected the Los Angeles claim (which alleged the same unfunded mandate claim that San Diego alleged) and appealed the judicial reversal of its decision, the trial court correctly determined that further attempts to seek relief from the Commission would have been futile. Therefore, we reject the state's jurisdictional argument and proceed to the merits of the appeal.

V. Existence of a Mandate Under Section 6

(4) In determining whether there is a mandate under section 6, we turn to our decision in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318] (*Lucia Mar*). There, we discussed section 6's application to Education Code section 59300, which "requires a school district to contribute part of the cost of educating pupils from the district at state schools for the severely handicapped." (*Lucia Mar*, *supra*, at p. 832.) Before 1979, the Legislature had statutorily required school districts "to contribute to the education of pupils from the districts at the state schools [citations] ...." (*Id.* at pp. 832-833.) The Legislature repealed the statutory requirements in 1979 and, on July 12, 1979, the state assumed full-funding responsibility. (*Id.* at p. 833.) On July 1, 1980, when section 6 became effective, the state still had full-funding responsibility. On June 28, 1981, Education Code section 59300 took effect. (*Lucia Mar*, *supra*, at p. 833.)

Various school districts filed a claim seeking reimbursement under section 6 for the payments that Education Code section 59300 requires. The Commission denied the claim, finding that the statute did not impose on the districts a new program or higher level of service. The trial court and Court of Appeal agreed, the latter "reasoning that a shift in the funding of an existing program is not a new program or a higher level of service" under section 6. (*Lucia Mar*, *supra*, 44 Cal.3d at p. 834.)

We reversed, finding that a contrary result would "violate the intent underlying section 6 ...." (*Lucia Mar*, *supra*, 44 Cal.3d at p. 835.) That section "was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of the [] ***91** restrictions

on the taxing and spending power of the local entities" that articles XIII A and XIII B of the California Constitution imposed. (*Lucia Mar*, *supra*, at pp. 835-836.) "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 ... because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B*, the result seems equally violative of the fundamental purpose underlying section 6 ...." (*Id.* at p. 836, italics added, fn. omitted.) We thus concluded in *Lucia Mar* "that because [Education Code] section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts —an obligation the school districts did not have at the time article XIII B was adopted—it calls for [the school districts] to support a 'new program' within the meaning of section 6." (*Ibid.*, fn. omitted.)

The similarities between *Lucia Mar* and the case before us "are striking. In *Lucia Mar*, prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-197[8] the state and county shared the cost of caring for [adult MIP's] under the Medi-Cal program.... [F]ollowing enactment of [article XIII A], the state took full responsibility for both programs." (*Kinlaw*, *supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.).) As to both programs, the Legislature cited adoption of article XIII A of the California Constitution, and specifically its effect on tax revenues, as the basis for the state's assumption of full funding responsibility. (Stats. 1979, ch. 237, § 10, p. 493; Stats. 1979, ch. 282, § 106, p. 1059.) "Then in 1981 (for handicapped children) and 1982 (for [adult MIP's]), the state sought to shift some of the burden back to the counties." (*Kinlaw*, *supra*, 54 Cal.3d at p. 353 (dis. opn. of Broussard, J.).)

Adopting the Commission's analysis in the Los Angeles action, the state nevertheless argues that *Lucia Mar* "is inapposite." The school program at issue in *Lucia Mar* "had been wholly operated, administered and financed by the state" and "was unquestionably a 'state program.' " " 'In contrast,' " the state argues, " 'the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for' " it under section 17000 and its predecessors.[13] The courts have interpreted section 17000 as "impos[ing] upon counties a duty to ***92** provide hospital and medical services to indigent residents. [Citations.]" (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].) Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIP's is section 17000, not the 1982 legislation. Moreover, because the Legislature enacted section 17000 in 1965, and section 6 does not apply to "mandates enacted prior to January 1, 1975," there is no reimbursable mandate. Finally, the state argues that, because section 17001 give counties "complete discretion" in setting eligibility and service standards under section 17000, there is no mandate. A contrary conclusion, the state asserts, "would erroneously expand the definition of what constitutes a 'new program' under" section 6. As we explain, we reject these arguments.

A. *The Source and Existence of San Diego's Obligation*

1. *The Residual Nature of the Counties' Duty Under Section 17000*

The state's argument that San Diego's obligation to provide medical care to adult MIP's predates the 1982 legislation contains numerous errors. First, the state misunderstands San Diego's obligation under section 17000. That section creates "the *residual* fund" to sustain indigents "who cannot qualify ... under any specialized aid programs." (*Mooney*, *supra*, 4 Cal.3d at p. 681, italics added; see also *Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 562; *Boehm v. Superior Court* (1986) 178 Cal.App.3d 494, 499 [223 Cal.Rptr. 716] [general assistance "is a program of last resort"].) By its express terms, the statute requires a county to relieve and support indigent persons *only* "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (§ 17000.)[14] "Consequently, to the extent that the state or federal governments provide[d] care for [adult MIP's], the [C]ounty's obligation to do so [was] reduced ...." (*Kinlaw*, *supra*, 54 Cal.3d at p. 354, fn. 14 (dis. opn. of Broussard, J.).)[15]

As we have explained, the state began providing adult MIP's with medical care under Medi-Cal in 1971. Although it

initially required counties to ***93** contribute generally to the costs of Medi-Cal, it did not set forth a specific amount for coverage of MIP's. The state was primarily responsible for the costs of the program, and the counties were simply required to contribute funds to defray the state's costs. Beginning with the 1978-1979 fiscal year, the state paid all costs of the Medi-Cal program, including the cost of medical care for adult MIP's. Thus, when section 6 was adopted in November 1979, to the extent that Medi-Cal provided medical care to adult MIP's, San Diego bore no financial responsibility for these health care costs. [16]

The California Attorney General has expressed a similar understanding of Medi-Cal's effect on the counties' medical care responsibility under section 17000. After the 1971 extension of Medi-Cal coverage to MIP's, Fresno County sought an opinion regarding the scope of its duty to provide medical care under section 17000. It asserted that the 1971 repeal of former section 14108.5, which declared the Legislature's concern with the counties' problems in caring for indigents not eligible for Medi-Cal, evidenced a legislative intent to preempt the field of providing health services. (56 Ops.Cal.Atty.Gen., *supra*, at p. 571.) The Attorney General disagreed, concluding that the 1971 change "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (*Id.* at p. 569.) The Attorney General explained: "The statement of concern acknowledged the obligation of counties to continue to provide medical assistance under section 17000; the removal of the statement of concern was not accompanied by elimination of such duty on the part of the counties, *except as the addition of* [*MIP's*] *to the Medi-Cal program would remove the burden on the counties to provide medical care for such persons*." (*Id.* at p. 571, italics added.) ***94**

Indeed, the Legislature's statement of intent in an uncodified section of the 1982 legislation excluding adult MIP's from Medi-Cal suggests that it also shared our understanding of section 17000. Section 8.3 of the 1982 Medi-Cal revisions expressly declared the Legislature's intent "[i]n eliminating [M]edically [I]ndigent [A]dults from the Medi-Cal program ...." (Stats. 1982, ch. 328, § 8.3, p. 1575; Stats. 1982, ch. 1594, § 86, p. 6357.) It stated in part: "It is further the intent of the Legislature to provide counties with as much flexibility as possible in organizing county health services to serve *the population being transferred*." (Stats. 1982, ch. 328, § 8.3, p. 1576; Stats. 1982, ch. 1594, § 86, p. 6357, italics added.) If, as the state contends, counties had always been responsible under section 17000 for the medical care of adult MIP's, the description of adult MIP's as "the population being transferred" would have been inaccurate. By so describing adult MIP's, the Legislature indicated its understanding that counties did not have this responsibility while adult MIP's were eligible for Medi-Cal. These sources fully support our rejection of the state's argument that the 1982 legislation did not impose a mandate because, under section 17000, counties had always borne the responsibility for providing medical care to adult MIP's.

2. *The State's Assumption of Full Funding Responsibility for Providing Medical Care to Adult MIP's Under Medi-Cal*

To support its argument that it never relieved counties of their obligation under section 17000 to provide medical care to adult MIP's, the state characterizes as "temporary" the Legislature's assumption of full-funding responsibility for adult MIP's. According to the state, "any ongoing responsibility of the county was, at best, only temporarily, partially, alleviated (and never supplanted)." The state asserts that the Court of Appeal thus "erred by focusing on one phase in th[e] shifting pattern of arrangements" for funding indigent health care, "a focus which led to a myopic conclusion that the state alone is forever responsible for funding the health care for" adult MIP's.

A comparison of the 1978 and 1979 statutes that eliminated the counties' share of Medi-Cal costs refutes the state's claim. The Legislature expressly limited the effect of the 1978 legislation to one fiscal year, providing that the state "shall pay" each county's Medi-Cal cost share "for the period from July 1, 1978, to June 30, 1979." (Stats. 1978, ch. 292, § 33, p. 610.) The Legislative Counsel's Digest explained that this section would require the state to pay "[a]ll county costs for Medi-Cal" for "the 1978-79 fiscal year only." (Legis. Counsel's Dig., Sen. Bill No. 154, 4 Stats. 1978 (Reg. Sess.), Summary Dig., p. 71.) The digest further explained that the purpose of the bill containing this section was "the *partial* relief of local government from the *temporary* difficulties brought about by the approval of Proposition 13." ***95** (*Id.* at p. 70, italics added.) Clearly, the Legislature knew how to include words of limitation when it intended the effects of its provisions to be temporary.

By contrast, the 1979 legislation contains no such limiting language. It simply provided: "Section 14150 of the Welfare and Institutions Code is repealed." (Stats. 1979, ch. 282, § 74, p. 1043.) In setting forth the need to enact the legislation as an urgency statute, the Legislature explained: "The adoption

of Article XIII A ... may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately." (Stats. 1979, ch. 282, § 106, p. 1059.) In describing the effect of this legislation, the Legislative Counsel first explained that, "[u]nder existing law, the counties pay a specified annual share of the cost of" Medi-Cal. (Legis. Counsel's Dig., Assem. Bill No. 8, 4 Stats. 1979 (Reg. Sess.), Summary Dig., p. 79.) Referring to the 1978 legislation, it further explained that "[f]or the 1978-79 fiscal year only, the state pays ... [¶] ... [a]ll county costs for Medi-Cal ...." (*Ibid.*) The 1979 legislation, the digest continued, "provid[ed] for state assumption of all county costs of Medi-Cal." (*Ibid.*) We find nothing in the 1979 legislation or the Legislative Counsel's summary indicating a legislative intent to eliminate the counties' cost share of Medi-Cal only temporarily.

The state budget process for the 1980-1981 fiscal year confirms that the Legislature's assumption of all Medi-Cal costs was not viewed as "temporary." In the summary of his proposed budget, then Governor Brown described Assembly Bill No. 8, 1981-1982 Regular Session, generally as "a long-term local financing measure" (Governor's Budget for 1980-1981 as submitted to Legislature (1979-1980 Reg. Sess.) Summary of Local Government Fiscal Relief, p. A-30) through which "[t]he total cost of [the Medi-Cal] program was *permanently* assumed by the State ...." (*Id.* at p. A-32, italics added.) Similarly, in describing to the Joint Legislative Budget Committee the Medi-Cal funding item in the proposed budget, the Legislative Analyst explained: "Item 287 includes the state cost of 'buying out' the county share of Medi-Cal expenditures. Following passage of Proposition 13, [Senate Bill No.] 154 appropriated $418 million to relieve counties of all fiscal responsibility for Medi-Cal program costs. Subsequently, [Assembly Bill No.] 8 was enacted, *which made permanent state assumption of county Medi-Cal costs*." (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1980-1981 Budget Bill, Assem. Bill No. 2020 (1979-1980 Reg. Sess.) at p. 721, italics added.) Thus, the state errs in asserting that the 1979 legislation eliminated the counties' financial support of Medi-Cal "only temporarily."

***96**

3. *State Administration of Medical Care for Adult MIP's Under Medi-Cal*

The state argues that, unlike the school program before us in *Lucia Mar*, *supra*, 44 Cal.3d 830, which "had been wholly operated, administered and financed by the state," the program for providing medical care to adult MIP's " 'has never been operated or administered by' " the state. According to the state, Medi-Cal was simply a state "reimbursement program" for care that section 17000 required counties to provide. The state is incorrect.

One of the legislative goals of Medi-Cal was "to allow eligible persons to secure basic health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 104.) "In effect, this meant that poorer people could have access to a private practitioner of their choice, and not be relegated to a county hospital program." (*California Medical Assn. v. Brian* (1973) 30 Cal.App.3d 637, 642 [106 Cal.Rptr. 555].) Medi-Cal "provided for reimbursement to both public and private health care providers for medical services rendered." (*Lackner*, *supra*, 97 Cal.App.3d at p. 581.) It further directed that, "[i]nsofar as practical," public assistance recipients be afforded "free choice of arrangements under which they shall receive basic health care." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 115.) Finally, since its inception, Medi-Cal has permitted county boards of supervisors to "prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to those requiring hospital care. The intent of this section is to eliminate discrimination or segregation based on economic disability so that the county hospital and other hospitals in the community share in providing services to paying patients and to those who qualify for care in public medical care programs." (§ 14000.2.) Thus, "Medi-Cal eligibles were to be able to secure health care in the same manner employed by the general public (i.e., in the private sector or at a county facility)." (1974 Legis. Analyst's Rep., *supra*, at p. 625; see also Preliminary Rep., *supra*, at p. 17.) By allowing eligible persons "a choice of medical facilities for treatment," Medi-Cal placed county health care providers "in competition with private hospitals." (*Hall*, *supra*, 23 Cal.App.3d at p. 1061.)

Moreover, administration of Medi-Cal over the years has been the responsibility of various state departments and agencies. (§§ 10720-10721, 14061-14062, 14105, 14203;

Belshé, *supra*, 13 Cal.4th at p. 751; *Morris*, *supra*, 67 Cal.2d at p. 741; Summary of Major Events, *supra*, at pp. 2-3, 15.) Thus, "[i]n adopting the Medi-Cal program the state Legislature, for the most part, shifted indigent medical care from being a county responsibility to a State ***97** responsibility under the Medi-Cal program. [Citation.]" (*Bay General Community Hospital v. County of San Diego* (1984) 156 Cal.App.3d 944, 959 [203 Cal.Rptr. 184] (*Bay General*); see also Preliminary Rep., *supra*, at p. 18 [with certain exceptions, Medi-Cal "shifted to the state" the responsibility for administration of the medical care provided to eligible persons].) We therefore reject the state's assertion that, while Medi-Cal covered adult MIP's, county facilities were the sole providers of their medical care, and counties both operated and administered the program that provided that care.

The circumstances we have discussed readily distinguish this case from *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 [38 Cal.Rptr.2d 304], on which the state relies. There, the court rejected the claim that Penal Code section 987.9, which required counties to provide criminal defendants with certain defense funds, imposed an unfunded state mandate. Los Angeles filed the claim after the state, which had enacted appropriations between 1977 and 1990 "to reimburse counties for their costs under" the statute, made no appropriation for the 1990-1991 fiscal year. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at p. 812.) In rejecting the claim, the court first held that there was no state mandate because Penal Code section 987.9 merely implemented the requirements of federal law. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at pp. 814-816.) Thus, the court stated, "[a]ssuming, arguendo, the provisions of [Penal Code] section 987.9 [constituted] a new program" under section 6, there was no state mandate. (*County of Los Angeles v. Commission on State Mandates*, *supra*, at p. 818.) Here, of course, it is unquestionably the state that has required San Diego to provide medical care to indigent persons.

In dictum, the court also rejected the argument that, under *Lucia Mar*, *supra*, 44 Cal.3d 830, the state's "decision not to reimburse the counties for their programs under [Penal Code] section 987.9" imposed a new program by shifting financial responsibility for the program to counties. (*County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th at p. 817.) The court explained: "In contrast [to *Lucia Mar*], the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under [Penal Code] section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility." (*Ibid.*) Here, as we have explained, between 1971 and 1983, the state administered and bore financial responsibility for the medical care that adult MIP's received under Medi-Cal. The Medi-Cal program was not simply a ***98** method of reimbursement for county costs. Thus, the state's reliance on this dictum is misplaced. [17]

In summary, our discussion demonstrates the Legislature excluded adult MIP's from Medi-Cal *knowing* and *intending* that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under section 17000. Thus, through the 1982 legislation, the Legislature attempted to do precisely that which the voters enacted section 6 to prevent: "transfer[] to [counties] the fiscal responsibility for providing services which the state believed should be extended to the public." [18] (*County of Los Angeles*, *supra*, 43 Cal.3d at p. 56; see also *City of Sacramento v. State of California*, *supra*, 50 Cal.3d at p. 68 [A "central purpose" of section 6 was "to prevent the state's transfer of the *cost of government* from *itself* to the local level."].) Accordingly, we view the 1982 legislation as having mandated a " 'new program' " on counties by "compelling them to accept financial responsibility in whole or in part for a program," i.e., medical care for adult MIP's, "which was funded entirely by the state before the advent of article XIII B." [19] (*Lucia Mar*, *supra*, 44 Cal.3d at p. 836.)

A contrary conclusion would defeat the purpose of section 6. Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the *entire* Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further ...." (*Kinlaw*, *supra*, 54 Cal.3d at p. 351 (dis. opn. of Broussard, J.).) As we have previously explained,

the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. (***99** *County of Los Angeles*, *supra*, 43 Cal.3d at p. 61.) Thus, it was the voters who decreed that we must, as the state puts it, "focus[] on one phase in th[e] shifting pattern of [financial] arrangements" between the state and the counties. Under section 6, the state simply cannot "compel[] [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B ...."[20] (*Lucia Mar*, *supra*, 44 Cal.3d at p. 836.)

B. *County Discretion to Set Eligibility and Service Standards*

(5a) The state next argues that, because San Diego had statutory discretion to set eligibility and service standards, there was no reimbursable mandate. Citing section 16704, the state asserts that the 1982 legislation required San Diego to spend MISA funds "only on those whom the *county* deems eligible *under § 17000*," "gave the county exclusive authority to determine the level and type of benefits it would provide," and required counties "to include [adult MIP's] in their § 17000 eligibility **only to the extent state funds were available and then only for 3 years.**"[21] (Original emphasis.) According to the state, under section 17001, "[t]he counties have ***100** complete discretion over the determination of eligibility, scope of benefits and how the services will be provided."[22]

The state exaggerates the extent of a county's discretion under section 17001. It is true "case law ... has recognized that section 17001 confers broad discretion upon the counties in performing their statutory duty to provide general assistance benefits to needy residents. [Citations.]" (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 211 [211 Cal.Rptr. 398, 695 P.2d 695] (*Robbins*).) However, there are "clear-cut limits" to this discretion. (*Ibid.*) (6) The counties may exercise their discretion "only within fixed boundaries. In administering General Assistance relief the county acts as an agent of the state. [Citation.] When a statute confers upon a state agency the authority to adopt regulations to implement, interpret, make specific or otherwise carry out its provisions, the agency's regulations must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose. (Gov. Code, § 11374.)" (*Mooney*, *supra*, 4 Cal.3d at p. 679.) Thus, the counties' eligibility and service standards must "carry out" the objectives of section 17000. (*Mooney*, *supra*, 4 Cal.3d at p. 679; see also *Poverty Resistance Center v. Hart* (1989) 213 Cal.App.3d 295, 304-305 [261 Cal.Rptr. 545]; § 11000 ["provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program"].) County standards that fail to carry out section 17000's objectives "are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." (*Morris*, *supra*, 67 Cal.2d at p. 737.) Courts, which have " 'final responsibility for the interpretation of the law,' " must strike them down. (*Id.* at p. 748.) Indeed, despite the counties' statutory discretion, "courts have consistently invalidated ... county welfare regulations that fail to meet statutory requirements. [Citations.]" (*Robbins*, *supra*, 38 Cal.3d at p. 212.)

1. *Eligibility*

(5b) Regarding eligibility, we conclude that counties must provide medical care to all adult MIP's. As we emphasized in *Mooney*, section 17000 requires counties to relieve and support " '*all indigent persons* lawfully resident therein, "when such persons are not supported and relieved by their relatives" or by some other means.' " (*Mooney*, *supra*, 4 Cal.3d at p. 678; see also *Bernhardt v. Board of Supervisors* (1976) 58 Cal.App.3d 806, 811 [130 Cal.Rptr. 189].) Moreover, section 10000 declares that the statutory "purpose" of division 9 of the Welfare and Institutions Code, which includes ***101** section 17000, "is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to *all* of its needy and distressed." (Italics added.) Thus, counties have no discretion to refuse to provide medical care to "indigent persons" within the meaning of section 17000 who do not receive it from other sources.[23] (See *Bell v. Board of Supervisors* (1994) 23 Cal.App.4th 1695, 1706 [28 Cal.Rptr.2d 919] [eligibility standards may not "defeat the purpose of the statutory scheme by depriving qualified recipients of mandated support"]; *Washington v. Board of Supervisors* (1993) 18 Cal.App.4th 981, 985 [22 Cal.Rptr.2d 852] [courts have repeatedly "voided county ordinances which have attempted to redefine eligibility standards set by state statute"].)

Although section 17000 does not define the term "indigent persons," the 1982 legislation made clear that all adult MIP's fall within this category for purposes of defining a county's obligation to provide medical care.[24] As part of its exclusion of adult MIP's, that legislation required counties to participate in the MISA program. (Stats. 1982, ch. 1594, §§ 68, 70, 86, pp. 6343-6347, 6357.) Regarding that program, the 1982 legislation amended section 16704, subdivision (c)(1), to require that a county board of supervisors, in applying for MISA funds, "assure that it will expend such funds only for [specified] health services ... provided to persons certified as eligible for such services pursuant to Section 17000 ...." (Stats. 1982, ch. 1594, § 70, p. 6346.) At the same time, the 1982 legislation amended section 16704, subdivision (c)(3), to provide that "[a]ny person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided." (Stats. 1982, ch. 1594, § 70, p. 6346.) As the state correctly explains, under this provision, "counties had to include [Medically Indigent Adults] in their [section] 17000 eligibility" standards. By requiring counties to make all adult MIP's eligible for services paid for with MISA funds, while at the same time requiring counties to promise to spend such funds *only* on those certified as eligible under section 17000, the Legislature established that all adult MIP's are "indigent persons" for purposes of the counties' duty to provide medical care under section 17000. Otherwise, the counties could not comply with their promise. ***102**

Our conclusion is not affected by language in section 16704, subdivision (c)(3), making it "operative only until June 30, 1985, unless a later enacted statute extends or deletes that date."[25] As we have explained, the subdivision established that adult MIP's are "indigent persons" within the meaning of section 17000 for medical care purposes. As we have also explained, section 17000 requires counties to relieve and support *all* "indigent persons." Thus, even if the state is correct in asserting that section 16704, subdivision (c)(3), is now inoperative and no longer prohibits counties from excluding adult MIP's from eligibility for medical services, section 17000 has that effect.[26]

Additionally, the coverage history of Medi-Cal demonstrates that the Legislature has always viewed all adult MIP's as "indigent persons" within the meaning of section 17000 for medical care purposes. As we have previously explained, when the Legislature created the original Medi-Cal program, which covered only categorically linked persons, it "declar[ed] its concern with the problems which [would] be facing the counties with respect to the medical care of indigent persons who [were] not covered" by Medi-Cal, "whose medical care [had to] be financed entirely by the counties in a time of heavily increasing medical costs." (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 116 [enacting former § 14108.5].) Moreover, to ensure that the counties' Medi-Cal cost share would not leave counties "with insufficient funds to provide hospital care for those persons not eligible for Medi-Cal," the Legislature also created the county option. (*Hall*, *supra*, 23 Cal.App.3d at p. 1061.) Through the county option, "the state agreed to assume all county health care costs ... in excess of county costs incurred during the 1964-1965 fiscal year, adjusted for population increases." (*Lackner*, *supra*, 97 Cal.App.3d at p. 586.) Thus, the Legislature expressly recognized that the categorically linked persons initially eligible for Medi-Cal did not constitute all "indigent persons" entitled to medical care under section 17000, and required the state to share in the financial responsibility for providing that care.

In adding adult MIP's to Medi-Cal in 1971, the Legislature extended Medi-Cal coverage to noncategorically linked persons "who [were] financially unable to pay for their medical care." (Legis. Counsel's Dig., Assem. Bill No. 949, 3 Stats. 1971 (Reg. Sess.) Summary Dig., p. 83.) This ***103** description was consistent with prior judicial decisions that, for purposes of a county's duty to provide "indigent persons" with hospitalization, had defined the term to include a person "who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support." (*Goodall v. Brite* (1936) 11 Cal.App.2d 540, 550 [54 P.2d 510].)

Moreover, the fate of amendments to section 17000 proposed at the same time suggests that, in the Legislature's view, the category of "indigent persons" entitled to medical care under section 17000 extended even *beyond* those eligible for Medi-Cal as MIP's. The June 17, 1971, version of Assembly Bill No. 949 amended section 17000 by adding the following: "however, the health needs of such persons shall be met under [Medi-Cal]." (Assem. Bill No. 949 (1971 Reg. Sess.) § 53.3, as amended June 17, 1971.) The Assembly deleted this amendment on July 20, 1971. (Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971, p. 37.) Regarding this change, the Assembly Committee on Health explained: "The proposed amendment to Section 17000, ... which would

have removed the counties' responsibilities as health care provider of last resort, is deleted. This change was originally proposed to clarify the guarantee to hold counties harmless from additional Medi-Cal costs. It is deleted since it cannot remove the fact that counties are, by definition, a 'last resort' for any person, with or without the means to pay, who does not qualify for federal or state aid." (Assem. Com. on Health, Analysis of Assem. Bill No. 949 (1971 Reg. Sess.) as amended July 20, 1971 (July 21, 1971), p. 4.)

The Legislature's failure to amend section 17000 in 1971 figured prominently in the Attorney General's interpretation of that section only two years later. In a 1973 published opinion, the Attorney General stated that the 1971 inclusion of MIP's in Medi-Cal "did not alter the duty of the counties to provide medical care to those indigents not eligible for Medi-Cal." (56 Ops.Cal.Atty.Gen., *supra*, at p. 569.) He based this conclusion on the 1971 legislation, relevant legislative history, and "the history of state medical care programs." (*Id.* at p. 570.) The opinion concluded: "The definition of medically indigent in [the chapter establishing Medi-Cal] is applicable only to that chapter and *does not include all those enumerated in section 17000*. If the former medical care program, by providing care only for a specific group, public assistance recipients, did not affect the responsibility of the counties to provide such service under section 17000, we believe the most recent expansion of the medical assistance program does not affect, *absent an express legislative intent to the contrary*, the duty of the counties under section 17000 to continue to provide services to those eligible under section 17000 but not under [Medi-Cal]." (*Ibid.*, italics added.) The Attorney General's opinion, although not binding, is entitled to considerable weight. ***104** (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829 [25 Cal.Rptr.2d 148, 863 P.2d 218].) Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction of section 17000 and would have taken corrective action if it disagreed with that construction. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 [270 Cal.Rptr. 796, 793 P.2d 2].)

In this case, of course, we need not (and do not) decide whether San Diego's obligation under section 17000 to provide medical care extended beyond adult MIP's. Our discussion establishes, however, that the obligation extended *at least* that far. The Legislature has made it clear that all adult MIP's are "indigent persons" under section 17000 for purposes of San Diego's obligation to provide medical care. Therefore, the state errs in arguing that San Diego had discretion to refuse to provide medical care to this population. [27]

2. *Service Standards*

(7) A number of statutes are relevant to the state's argument that San Diego had discretion in setting service standards. Section 17000 requires in general terms that counties "relieve and support" indigent persons. Section 10000, which sets forth the purpose of the division containing section 17000, declares the "legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life," so "as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society." (§ 10000.) "Section 17000, as authoritatively interpreted, mandates that medical care be provided to indigents and section 10000 requires that such care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care ...." (*Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1245 [56 Cal.Rptr.2d 255] (*Tailfeather*).)

Courts construing section 17000 have held that it "imposes a mandatory duty upon all counties to provide 'medically necessary care,' not just ***105** emergency care. [Citation.]" (*County of Alameda v. State Bd. of Control* (1993) 14 Cal.App.4th 1096, 1108 [18 Cal.Rptr.2d 487]; see also *Gardner v. County of Los Angeles* (1995) 34 Cal.App.4th 200, 216 [40 Cal.Rptr.2d 271]; § 16704.1 [prohibiting a county from requiring payment of a fee or charge "before [it] renders medically necessary services to ... persons entitled to services under Section 17000"].) It further "ha[s] been interpreted ... to impose a minimum standard of care below which the provision of medical services may not fall." (*Tailfeather*, *supra*, 48 Cal.App.4th at p. 1239.) In *Tailfeather*, the court stated that "section 17000 requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health ...." (*Id.* at p. 1240.) In reaching this conclusion, it cited *Cooke*, *supra*, 213 Cal.App.3d at page 404, which held that section 17000 requires counties to provide "dental care sufficient to remedy substantial pain and infection." (See also § 14059.5 [defining "[a] service [as] 'medically necessary' ... when it is reasonable and necessary to protect life, to prevent

significant illness or significant disability, or to alleviate severe pain"].)

During the years for which San Diego sought reimbursement, Health and Safety Code section 1442.5, former subdivision (c) (former subdivision (c)), also spoke to the level of services that counties had to provide under Welfare and Institutions Code section 17000.[28] As enacted in September 1974, former subdivision (c) provided that, whether a county's duty to provide care to all indigent people "is fulfilled directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to nonindigent people receiving health care services in private facilities in that county." (Stats. 1974, ch. 810, § 3, p. 1765.) The express "purpose and intent" of the act that contained former subdivision (c) was "to insure that the duty of counties to provide health care to indigents [was] properly and continuously fulfilled." (Stats. 1974, ch. 810, § 1, p. 1764.) Thus, until its repeal in September 1992,[29] former subdivision (c) "[r]equire[d] that the availability and quality of services provided to indigents directly by the county or alternatively be the same as that available to nonindigents in private facilities in that county." (Legis. Counsel's Dig., Sen. Bill No. 2369, 2 Stats. 1974 (Reg. Sess.) Summary Dig., p. 130; see also *Gardner v. County of Los Angeles*, *supra*, 34 Cal.App.4th at p. 216; ***106** *Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 564 [former subdivision (c) required that care provided "be *comparable* to that enjoyed by the nonindigent"].)[30] "For the 1990-91 fiscal year," the Legislature qualified this obligation by providing: "nothing in [former] subdivision (c) ... shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs." (Stats. 1990, ch. 457, § 23, p. 2013.)

Although we have identified statutes relevant to service standards, we need not here define the precise contours of San Diego's statutory health care obligation. The state argues generally that San Diego had discretion regarding the services it provided. However, the state fails to identify either the specific services that San Diego provided under its CMS program or which of those services, if any, were not required under the governing statutes. Nor does the state argue that San Diego could have eliminated all services and complied with statutory requirements. Accordingly, we reject the state's argument that, because San Diego had some discretion in providing services, the 1982 legislation did not impose a reimbursable mandate.[31]

VI. Minimum Required Expenditure

(8) The Court of Appeal held that, under the governing statutes, the Commission must initially determine the precise amount of any reimbursement due San Diego. It therefore reversed the damages portion of the trial court's judgment and remanded the matter to the Commission for this determination. Nevertheless, the Court of Appeal affirmed the trial court's finding that the Legislature required San Diego to spend at least $41 million on its CMS program for fiscal years 1989-1990 and 1990-1991. In affirming this finding, the Court of Appeal relied primarily on Welfare and Institutions Code section 16990, subdivision (a), as it read at all relevant times. The state contends this provision did not mandate that San Diego spend any minimum amount on the CMS program. It further asserts that the Court of Appeal's "ruling in effect sets a damages baseline, in contradiction to [its] ostensible reversal of the damage award." ***107**

Former section 16990, subdivision (a), set forth the financial maintenance-of-effort requirement for counties that received funding under the California Healthcare for the Indigent Program (CHIP). The Legislature enacted CHIP in 1989 to implement Proposition 99, the Tobacco Tax and Health Protection Act of 1988 (codified at Rev. & Tax. Code, § 30121 et seq.). Proposition 99, which the voters approved on November 8, 1988, increased the tax on tobacco products and allocated the resulting revenue in part to medical and hospital care for certain persons who could not afford those services. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 248, 254 [279 Cal.Rptr. 325, 806 P.2d 1360].) During the 1989-1990 and 1990-1991 fiscal years, former section 16990, subdivision (a), required counties receiving CHIP funds, "at a minimum," to "maintain a level of financial support of county funds for health services at least equal to its county match and any overmatch of county funds in the 1988-89 fiscal year," adjusted annually as provided. (Stats. 1989, ch. 1331, § 9, p. 5427.) Applying this provision, the Court of Appeal affirmed the trial court's finding that the state had required San Diego to spend in fiscal years 1989-1990 and 1990-1991 at least $41 million on the CMS program.

We agree with the state that this finding is erroneous. Unlike participation in MISA, which was mandatory, participation in CHIP was voluntary. In establishing CHIP, the Legislature appropriated funds "for allocation to counties *participating* in" the program. (Stats. 1989, ch. 1331, § 10, p. 5436, italics added.) Section 16980, subdivision (a), directed the State Department of Health Services to make CHIP payments "upon application of the county assuring that it will comply with" applicable provisions. Among the governing provisions were former sections 16990, subdivision (a), and 16995, subdivision (a), which provided: "To be eligible for receipt of funds under this chapter, a county may not impose more stringent eligibility standards for the receipt of benefits under Section 17000 or reduce the scope of benefits compared to those which were in effect on November 8, 1988." (Stats. 1989, ch. 1331, § 9, p. 5431.)

However, San Diego has cited no provision, and we have found none, that *required* eligible counties to participate in the program or apply for CHIP funds. Through Revenue and Taxation Code section 30125, which was part of Proposition 99, the electorate directed that funds raised through Proposition 99 "shall be used to supplement existing levels of service and not to fund existing levels of service." (See also Stats. 1989, ch. 1331, §§ 1, 19, pp. 5382, 5438.) Counties not wanting to supplement their existing levels of service, and who therefore did not want CHIP funds, were not bound by the program's requirements. Those counties, including San Diego, that chose to ***108** seek CHIP funds did so voluntarily. [32] Thus, the Court of Appeal erred in concluding that former section 16990, subdivision (a), mandated a minimum funding requirement for San Diego's CMS program.

Nor did former section 16991, subdivision (a)(5), which the trial court and Court of Appeal also cited, establish a minimum financial obligation for San Diego's CMS program. Former section 16991 generally "establish[ed] a procedure for the allocation of funds to each county receiving funds from the [MISA] ... for the provision of services to persons meeting certain Medi-Cal eligibility requirements, based on the percentage of newly legalized individuals under the federal Immigration Reform and Control Act (IRCA)." (Legis. Counsel's Dig., Assem. Bill No. 75, 4 Stats. 1989 (Reg. Sess.) Summary Dig., p. 548.) Former section 16991, subdivision (a)(5) required the state, for fiscal years 1989-1990 and 1990-1991, to reimburse a county if its combined allocation from various sources was less than the funding it received under section 16703 for fiscal year 1988-1989. [33] Nothing about this state reimbursement requirement imposed on San Diego a minimum funding requirement for its CMS program.

Thus, we must reverse the judgment insofar as it finds that former sections 16990, subdivision (a), and 16991, subdivision (a)(5), established a $41 million spending floor for San Diego's CMS program. Instead, the various statutes that we have previously discussed (e.g., §§ 10000, 17000, and Health & Saf. Code, § 1442.5, former subd. (c)), the cases construing those statutes, and any other relevant authorities must guide the Commission's determination of the level of services that San Diego had to provide and any reimbursement to which it is entitled. ***109**

VII. Remaining Issues

(9) The state raises a number of additional issues. It first complains that a mandamus proceeding under Code of Civil Procedure section 1085 was an improper vehicle for challenging the Commission's position. It asserts that, under Government Code section 17559, review by administrative mandamus under Code of Civil Procedure section 1094.5 is the exclusive method for challenging a Commission decision denying a mandate claim. The Court of Appeal rejected this argument, reasoning that the trial court had jurisdiction under Code of Civil Procedure section 1085 because, under section 6, the state has a ministerial duty of reimbursement when it imposes a mandate.

Like the Court of Appeal, but for different reasons, we reject the state's argument. "[M]andamus pursuant to [Code of Civil Procedure] section 1094.5, commonly denominated 'administrative' mandamus, is mandamus still. It is not possessed of 'a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.' [Citations.] The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute. [Citations.]" (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 673-674 [170 Cal.Rptr. 484, 620 P.2d 1032].) Where the entitlement to mandamus relief is adequately alleged, a trial court may treat a proceeding brought under Code of Civil Procedure section 1085 as one brought under Code of Civil Procedure section 1094.5 and should deny a demurrer asserting that the wrong mandamus statute has been invoked. (*Woods*, *supra*, 28 Cal.3d at

pp. 673-674; *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 813-814 [140 Cal.Rptr. 442, 567 P.2d 1162].) Thus, even if San Diego identified the wrong mandamus statute, the error did not affect the trial court's ability to grant mandamus relief.

"In any event, distinctions between traditional and administrative mandate have little impact on this appeal ...." (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1584 [18 Cal.Rptr.2d 680].) The determination whether the statutes here at issue established a mandate under section 6 is a question of law. (*County of Fresno v. Lehman*, *supra*, 229 Cal.App.3d at p. 347.) In reaching our conclusion, we have relied on no facts that are in dispute. Where, as here, a "purely legal question" is at issue, courts "exercise independent judgment ... , no matter whether the issue arises by traditional or administrative mandate. [Citations.]" (*McIntosh*, *supra*, 14 Cal.App.4th at p. 1584.) As the state concedes, even under Code of Civil Procedure section 1094.5, a judgment must "be reversed if based on erroneous conclusions of law." Thus, any differences between the two mandamus statutes have had no impact on our analysis. ***110**

The state next contends that the trial court prejudicially erred in denying the "peremptory disqualification" motion that the Director of the Department of Finance filed under Code of Civil Procedure section 170.6. We will not review this ruling, however, because it is reviewable only by writ of mandate under Code of Civil Procedure section 170.3, subdivision (d). (*People v. Webb* (1993) 6 Cal.4th 494, 522-523 [24 Cal.Rptr.2d 779, 862 P.2d 779]; *People v. Hull* (1991) 1 Cal.4th 266 [2 Cal.Rptr.2d 526, 820 P.2d 1036].)

Nor can we address the state's argument that the trial court erred in granting a preliminary injunction. The May 1991 order granting the preliminary injunction was "immediately and separately appealable" under Code of Civil Procedure section 904.1, subdivision (a)(6). (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal.App.4th 640, 645 [4 Cal.Rptr.2d 689].) Thus, the state's attempt to challenge the order in an appeal filed after entry of final judgment in December 1992 was untimely.[34] (See *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230, 251 [256 Cal.Rptr. 194].) Moreover, the state's attempt to appeal the order granting the preliminary injunction is moot because of (1) the trial court's July 1 order granting a peremptory writ of mandate, which expressly "supersede[d] and replace[d]" the preliminary injunction order and (2) entry of final judgment. (*Sheward v. Citizens' Water Co.* (1891) 90 Cal. 635, 638-639 [27 P. 439]; *People v. Morse* (1993) 21 Cal.App.4th 259, 264-265 [25 Cal.Rptr.2d 816]; *Art Movers, Inc.*, *supra*, 3 Cal.App.4th at p. 647.)

Finally, the state requests that we reverse the trial court's reservation of jurisdiction regarding an award of attorney fees. This request is premature. In the judgment, the trial court "retain[ed] jurisdiction to determine any right to and amount of attorneys' fees ...." This provision does not declare that San Diego in fact has a right to an award of attorney fees. Nor has San Diego asserted such a right. As San Diego states, at this point, "[t]here is nothing for this Court to review." We will not give an advisory ruling on this issue.

VIII. Disposition

The judgment of the Court of Appeal is affirmed insofar as it holds that the exclusion of adult MIP's from Medi-Cal imposed a mandate on San Diego within the meaning of section 6. The judgment is reversed insofar as it holds that the state required San Diego to spend at least $41 million on the CMS program in fiscal years 1989-1990 and 1990-1991. The matter is ***111** remanded to the Commission to determine whether, and by what amount, the statutory standards of care (e.g., Health & Saf. Code, § 1442.5, former subd. (c); Welf. & Inst. Code, §§ 10000, 17000) forced San Diego to incur costs in excess of the funds provided by the state, and to determine the statutory remedies to which San Diego is entitled.

C. J., Mosk, J., Baxter, J., Anderson, J.,* and Aldrich, J.,†]]]] concurred.

KENNARD, J.

I dissent.

As part of an initiative measure placing spending limits on state and local government, the voters in 1979 added article XIII B to the California Constitution. Section 6 of this article provides that when the state "mandates a new

program or higher level of service on any local government," the state must reimburse the local government for the cost of such program or service. Under subdivision (c) of this constitutional provision, however, the state "may, but need not," provide such reimbursement *if the state mandate was enacted before January 1, 1975*. (Cal. Const., art. XIII B, § 6, subd. (c).) Subdivision (c) is the critical provision here.

Because the counties have for many decades been under a state mandate to provide for the poor, a mandate that existed before the voters added article XIII B to the state Constitution, the express language of subdivision (c) of section 6 of article XIII B exempts the state from any *legal obligation* to reimburse the counties for the cost of medical care to the needy. The fact that for a certain period after 1975 the state directly paid under the state Medi-Cal program for these costs did not lead to the creation of a new mandate once the state stopped doing so. To hold to the contrary, as the majority does, is to render subdivision (c) a nullity.

The issue here is not whether the poor are entitled to medical care. They are. The issue is whether the state or the counties must pay for this care. The majority places this obligation on the state. The counties' win, however, may be a pyrrhic victory. For, in anticipation of today's decision, the Legislature has enacted legislation that will drastically reduce the counties' share of other state revenue, as discussed in part III below.

I

Beginning in 1855, California imposed a legal obligation on the counties to take care of their poor. (*Mooney* v. *Pickett* (1971) 4 Cal.3d 669, 677-678 ***112** [94 Cal.Rptr. 279, 483 P.2d 1231].) Since 1965, this obligation has been codified in Welfare and Institutions Code section 17000. (Stats. 1965, ch. 1784, § 5, p. 4090.) That statute states in full: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (Welf. & Inst. Code, § 17000.) Included in this is a duty to provide medical care to indigents. (*Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 557 [254 Cal.Rptr. 905].)

A brief overview of the efforts by federal, state, and local governments to furnish medical services to the poor may be helpful.

Before March 1, 1966, the date on which California began its Medi-Cal program, medical services for the poor "were provided in different ways and were funded by the state, county, and federal governments in varying amounts." (Assem. Com. on Public Health, Preliminary Rep. on Medi-Cal (Feb. 29, 1968) p. 3.) The Medi-Cal program, which California adopted to implement the federal Medicaid program (42 U.S.C. § 1396 et seq.; see *Morris v. Williams* (1967) 67 Cal.2d 733, 738 [63 Cal.Rptr. 689, 433 P.2d 697]), at first limited eligibility to those persons "linked" to a federal categorical aid program by being over age 65, blind, disabled, or a member of a family with dependent children. (Legis. Analyst, Rep. to Joint Legis. Budget Com., Analysis of 1971-1972 Budget Bill, Sen. Bill No. 207 (1971 Reg. Sess.), pp. 548, 550.) Persons not linked to federal programs were ineligible for Medi-Cal; they could obtain medical care from the counties. (*County of Santa Clara* v. *Hall* (1972) 23 Cal.App.3d 1059, 1061 [100 Cal.Rptr. 629].)

In 1971, the Legislature revised Medi-Cal by extending coverage to certain so-called "noncategorically linked" persons, or "medically indigent persons." (Stats. 1971, ch. 577, §§ 12, 13, 22.5, 23, pp. 1110-1111, 1115.) The revisions included a formula for determining each county's share of Medi-Cal costs for the 1972-1973 fiscal year, with increases in later years based on the assessed value of property. (*Id.* at §§ 41, 42, pp. 1131-1133.)

In 1978, California voters added to the state Constitution article XIII A (Proposition 13), which severely limited property taxes. In that same year, to help the counties deal with the drastic drop in local tax revenue, the Legislature assumed the counties' share of Medi-Cal costs. (Stats. 1978, ch. 292, § 33, p. 610.) In 1979, the Legislature relieved the counties of their obligation to share in Medi-Cal costs. (Stats. 1979, ch. 282, § 106, p. 1059.) ***113** Also in 1979, the voters added to the state Constitution article XIII B, which placed spending limits on state and local governments and added the mandate/reimbursement provisions at issue here.

In 1982, the Legislature removed from Medi-Cal eligibility the category of "medically indigent persons" that had been added in 1971. The Legislature also transferred funds for indigent health care services from the state to the counties

through the Medically Indigent Services Account. (Stats. 1982, ch. 328, §§ 6, 8.3, 8.5, pp. 1574-1576; Stats. 1982, ch. 1594, §§ 19, 86, pp. 6315, 6357.) Medically Indigent Services Account funds were then combined with county health service funds to provide health care to persons not eligible for Medi-Cal (Stats. 1982, ch. 1594, § 86, p. 6357), and counties were to provide health services to persons in this category "to the extent that state funds are provided" (*id.*, § 70, p. 6346).

From 1983 through June 1989, the state fully funded San Diego County's program for furnishing medical care to the poor. Thereafter, in fiscal years 1989-1990 and 1990-1991, the state partially funded San Diego County's program. In early 1991, however, the state refused to provide San Diego County full funding for the 1990-1991 fiscal year, prompting a threat by the county to terminate its indigent medical care program. This in turn led the Legal Aid Society of San Diego to file an action against the County of San Diego, asserting that Welfare and Institutions Code section 17000 imposed a legal obligation on the county to provide medical care to the poor. The county cross-complained against the state. The county argued that the state's 1982 removal of the category of "medically indigent persons" from Medi-Cal eligibility mandated a "new program or higher level of service" within the meaning of section 6 of article XIII B of the California Constitution, because it transferred the cost of caring for these persons to the county. Accordingly, the county contended, section 6 required the state to reimburse the county for its cost of providing such care, and prohibited the state from terminating reimbursement as it did in 1991. The county eventually reached a settlement with the Legal Aid Society of San Diego, leading to a dismissal of the latter's complaint.

While the County of San Diego's case against the state was pending, litigation was proceeding in a similar action against the state by the County of Los Angeles and the County of San Bernardino. In that action, the Superior Court for the County of Los Angeles entered a judgment in favor of Los Angeles and San Bernardino Counties. The state sought review in the Second District Court of Appeal in Los Angeles. In December 1992, the parties to the Los Angeles case entered into a settlement agreement providing for dismissal of the appeal and vacating of the superior court judgment. ***114** The Court of Appeal thereafter ordered that the superior court judgment be vacated and that the appeal be dismissed.

The County of San Diego's action against the state, however, was not settled. It proceeded on the county's claim against the state for reimbursement of the county's expenditures for medical care to the indigent. [1] The majority holds that the county is entitled to such reimbursement. I disagree.

II

Article XIII B, section 6 of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, *except that the Legislature may, but need not, provide such subvention of funds for the following mandates:* [¶] ... [¶] *(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*" (Italics added.) [2]

Of importance here is Welfare and Institutions Code section 17000 (hereafter sometimes section 17000). It imposes a legal obligation on the counties to provide, among other things, medical services to the poor. (*Board of Supervisors v. Superior Court*, *supra*, 207 Cal.App.3d at p. 557; *County of San Diego v. Viloria* (1969) 276 Cal.App.2d 350, 352 [80 Cal.Rptr. 869].) Section 17000 was enacted long before and has existed continuously since January 1, 1975, the date set forth in subdivision (c) of section 6 of article XIII B of the California Constitution. Thus, section 17000 falls within subdivision (c)'s language of "[l]egislative mandates enacted prior to January 1, 1975," rendering it exempt from the reimbursement provision of section 6.

Contrary to the majority's conclusion, the Legislature's 1982 legislation removing the category of "medically indigent persons" from Medi-Cal did not meet California Constitution, article XIII B, section 6 's requirement of imposing on local government "a new program or higher level of service," and therefore did not entitle the counties to reimbursement from the state under section 6 of article XIII B. The counties' legal obligation to provide medical care arises from section 17000, not from the subsequently enacted ***115** 1982 legislation. The majority itself concedes that the 1982 legislation merely "trigger[ed] the counties' responsibility to provide medical care as providers of last resort under section 17000." (Maj. opn., *ante,* at p. 98.) Although certain actions by the state and the federal government during the 1970's and 1980's may have alleviated the counties' financial burden of providing medical care for the indigent, those actions did not supplant or remove the counties' existing legal obligation under section

17000 to furnish such care. (*Cooke* v. *Superior Court* (1989) 213 Cal.App.3d 401, 411 [261 Cal.Rptr. 706]; *Madera Community Hospital* v. *County of Madera* (1984) 155 Cal.App.3d 136, 151 [201 Cal.Rptr. 768].)

The state's reimbursement obligation under section 6 of article XIII B of the California Constitution arises only if, after January 1, 1975, the date mentioned in subdivision (c) of section 6, the state imposes on the counties "a new program or higher level of service." That did not occur here. As I pointed out above, the counties' legal obligation to provide for the poor arises from section 17000, enacted long before the January 1, 1975, cutoff date set forth in subdivision (c) of section 6. That statutory obligation remained in effect when during a certain period after 1975 the state assumed the financial burden of providing medical care to the poor, in an effort to help the counties deal with a drastic drop in local revenue as a result of the voters' passage of Proposition 13, which severely limited property taxes. Because the counties' statutory obligation to provide health care to the poor was created before 1975 and has existed unchanged since that time, the state's 1982 termination of Medi-Cal eligibility for "medically indigent persons" did not create a "new program or higher level of service" within the meaning of section 6 of article XIII B, and therefore did not obligate the state to reimburse the counties for their expenditures in health care for the poor.

III

In imposing on the state a legal obligation to reimburse the counties for their cost of furnishing medical services to the poor, the majority's holding appears to bail out financially strapped counties. Not so.

Today's decision will immediately result in a reduction of state funds available to the counties. Here is why. In 1991, the Legislature added section 11001.5 to the Revenue and Taxation Code, providing that 24.33 percent of the moneys collected by the Department of Motor Vehicles as motor vehicle license fees must be deposited in the State Treasury to the credit of the Local Revenue Fund. In anticipation of today's decision, the Legislature stated in subdivision (d) of this statute: "This section shall cease to be operative on ***116** the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal [that]: [¶] ... [¶] (2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982." (Rev. & Tax. Code, § 11001.5, subd. (d); see also *id*., § 10753.8, subd. (b).)

The loss of such revenue, which the Attorney General estimates at "hundreds of millions of dollars," may put the counties in a serious financial bind. Indeed, realization of the scope of this revenue loss appears to explain why the County of Los Angeles, after a superior court victory in its action seeking state reimbursement for the cost of furnishing medical care to "medically indigent persons," entered into a settlement with the state under which the superior court judgment was effectively obliterated by a stipulated reversal. (See *Neary v. Regents of University of California* (1992) 3 Cal.4th 273 [10 Cal.Rptr.2d 859, 834 P.2d 119].) In a letter addressed to the Second District Court of Appeal, sent while the County of Los Angeles was engaged in settlement negotiations with the state, the county's attorney referred to the legislation mentioned above in these terms: "This legislation was quite clearly written with this case in mind. Consequently, to pursue this matter, *the County of Los Angeles risks losing a funding source it must have to maintain its health services programs at current levels.* The additional funding that might flow to the County from a final judgment in its favor in this matter, is several years away *and is most likely of a lesser amount than this County's share of the vehicle license fees*." (Italics added.) Thus, the County of Los Angeles had apparently determined that a legal victory entitling it to reimbursement from the state for the cost of providing medical care to the category of "medically indigent persons" would not in fact serve its economic interests.

I have an additional concern. According to the majority, whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state. This means that so long as section 17000 continues to exist, an increase in state funding to a particular county for the care of the poor, once undertaken, may be irreversible, thus locking the state into perpetual financial assistance to that county for health care to the needy. This would, understandably, be a major disincentive for the Legislature to ever increase the state's funding of a county's medical care for the poor.

The rigidity imposed by today's holding will have unfortunate consequences should the state's limited financial resources

prove insufficient to ***117** reimburse the counties under section 6 of article XIII B of the California Constitution for the "new program or higher level of service" of providing medical care to the poor under section 17000. In that event, the state may be required to modify this "new program or higher level of service" in order to reconcile the state's reimbursement obligation with its finite resources and its other financial commitments. Such modifications are likely to take the form of limitations on eligibility for medical care or on the amount or kinds of medical care that the counties must provide to the poor under section 17000. A more flexible system—one that actively encouraged shared state and county responsibility for indigent medical care, using a variety of innovative funding mechanisms—would be less likely to result in a curtailment of medical services to the poor.

And if the Legislature is unable or unwilling to appropriate funds to comply with the majority's reimbursement order, the law allows the county to file "in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement." (Gov. Code, § 17612, subd. (c); see maj. opn., *ante,* at p. 82.) Such a declaration would do nothing to alleviate the plight of the poor.

Conclusion

The dispute in this case ultimately arises from a collision between the taxing limitations on the counties imposed by article XIII A of the state Constitution and the preexisting, open-ended mandate imposed on them under Welfare and Institutions Code section 17000 to provide medical care for the poor. As I have explained, the Legislature's assumption thereafter of some of the resulting financial burden to the counties did not repeal section 17000' s mandate, nor did the Legislature's later termination of its financial support create a new mandate. In holding to the contrary, the majority imposes on the Legislature an obligation that the Legislature does not have under the law.

I recognize that my resolution of this issue—that under existing law the state has *no legal obligation* to reimburse the counties for health expenditures for the poor—would leave the counties in the same difficult position in which they find themselves now: providing funding for indigent medical care while maintaining other essential public services in a time of fiscal austerity. But complex policy questions such as the structuring and funding of indigent medical care are best left to the counties, the Legislature, and ultimately the electorate, rather than to the courts. It is the counties that must figure out how to allocate the limited budgets imposed on them by the electorate's adoption of articles XIII A and XIII B of the California Constitution among indigent medical care programs and a host of other pressing ***118** and essential needs. It is the Legislature that must decide whether to furnish financial assistance to the counties so they can meet their section 17000 obligations to provide for the poor, and whether to continue to impose the obligations of section 17000 on the counties. It is the electorate that must decide whether, given the ever-increasing costs of meeting the needs of indigents under section 17000, counties should be afforded some relief from the taxing and spending limits of articles XIII A and XIII B, both enacted by voters' initiative. These are hard choices, but for the reasons just given they are better made by the representative branches of government and the electorate than by the courts. ***119**

Footnotes

* Retired judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 Except as otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

2 Congress later repealed the requirement that states work towards expanding eligibility. (See Cal. Health and Welfare Agency, The Medi-Cal Program: A Brief Summary of Major Events (Mar. 1990) p. 1 (Summary of Major Events).)

3 Former section 14150.1 provided in relevant part: “[A] county may elect to pay as its share [of Medi-Cal costs] one hundred percent ... of the county cost of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county .... If the county so elects, the county costs of health care in any fiscal year shall not exceed the total county costs of health care uncompensated from any source in 1964-65 for all categorical aid recipients, and all other persons in the county hospital or in a contract hospital, increased for such county for each fiscal year subsequent to 1964-65 by an amount proportionate to the increase in population for such county ....” (Stats. 1966, Second Ex. Sess. 1965, ch. 4, § 2, p. 121.)

4 Former section 14150 provided the standard method for determining the counties' share of Medi-Cal costs. Under it, “a county was required to pay the state a specific sum, in return for which the state would pay for the medical care of all [categorically linked] individuals .... Financial responsibility for nonlinked individuals ... remained with the counties.” (*Lackner*, *supra*, 97 Cal.App.3d at p. 581.)

5 In this opinion, the terms “adult MIP's” and “Medically Indigent Adults” refer only to those persons who were excluded from the Medi-Cal program by the 1982 legislation.

6 San Diego lodged with the trial court a copy of the Commission's decision in the Los Angeles action.

7 In setting forth the facts relating to the Los Angeles action, we rely in part on the appellate record from that action, of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459.)

8 The settlement resulted from 1991 legislation that changed the system of health care funding as of June 30, 1991. (See § 17600 et seq.; Stats. 1991, chs. 87, 89, pp. 231-235, 243-341.) That legislation provided counties with new revenue sources, including a portion of state vehicle license fees, to fund health care programs. However, the legislation declared that the statutes providing counties with vehicle license fees would “cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal” that “[t]he state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.” (Rev. & Tax. Code, §§ 10753.8, subd. (b)(2), 11001.5, subd. (d)(2); see also Stats. 1991, ch. 89, § 210, p. 340.) Los Angeles and San Bernardino Counties settled their action to avoid triggering these provisions. Unlike the dissent, we do not believe that consideration of these recently enacted provisions is appropriate in analyzing the 1982 legislation. Nor do we assume, as the dissent does, that our decision necessarily triggers these provisions. That issue is not before us.

9 The cross-complaint named the following state officers: (1) Kenneth W. Kizer, Director of the Department of Health Services; (2) Kim Belshé, Acting Secretary of the Health and Welfare Agency; (3) Gray Davis, the State Controller; (4) Kathleen Brown, the State Treasurer; and (5) Thomas Hayes, the Director of the Department of Finance. Where the context suggests, subsequent references in this opinion to “the state” include these officers.

10 The judgment dismissed all of San Diego's other claims.

11 In *Garamendi*, *supra*, 20 Cal.App.4th at pages 771-775, the court discussed procedural requirements for raising a claim that another court has already exercised its concurrent jurisdiction. Given our conclusion that the trial court's error here was not jurisdictional, we express no opinion about this discussion in *Garamendi* or the sufficiency of the state's efforts to raise the issue in this case.

12 Notably, in discussing the options still available to San Diego, the state asserts that San Diego “might have been able to go to superior court and file a [mandamus] petition based on the record of the prior test claim.”

13 “County General Assistance in California dates from 1855, and for many years afforded the only form of relief to indigents.” (*Mooney* v . *Pickett* (1971) 4 Cal.3d 669, 677 [94 Cal.Rptr. 279, 483 P.2d 1231] (*Mooney*).) Section 17000 is substantively identical to former section 2500, which was enacted in 1937. (Stats. 1937, chs. 369, 464, pp. 1097, 1406.)

14 See also *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 639 [122 P.2d 526] (construing former section 2500); *Jennings v. Jones* (1985) 165 Cal.App.3d 1083, 1091 [212 Cal.Rptr. 134] (counties must support all indigent persons "having no other means of support"); *Union of American Physicians & Dentists v. County of Santa Clara* (1983) 149 Cal.App.3d 45, 51, fn. 10 [196 Cal.Rptr. 602]; *Rogers v. Detrich* (1976) 58 Cal.App.3d 90, 95 [128 Cal.Rptr. 261] (counties have duty of support "where such support is not otherwise furnished").

15 In asserting that Medi-Cal coverage did not supplant San Diego's obligation under section 17000, the dissent incorrectly relies on *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] (*Madera*) and *Cooke*, *supra*, 213 Cal.App.3d 401. (Dis. opn., *post*, at p. 115.) In *Madera*, the court voided a county ordinance that extended county benefits under section 17000 only to persons " 'meeting all eligibility standards for the Medi-Cal program.' " (*Madera*, *supra*, 155 Cal.App.3d at p. 150.) The court explained: "Because all funding for the Medi-Cal program comes from either the federal or the state government ..., [c]ounty has denied any financial obligation whatsoever from county funds for the medical care of its indigent and poor residents." (*Ibid.*) Thus, properly understood, *Madera* held only that Medi-Cal does not relieve counties of their obligation to provide medical care to persons who are "indigent" within the meaning of section 17000 but who are ineligible for Medi-Cal. The limit of *Madera*'s holding is apparent from the court's reliance on a 1979 opinion of the Attorney General discussing the scope of a county's authority under section 17000. (*Madera*, *supra*, 155 Cal.App.3d at pp. 151-152.) The Attorney General explained that "[t]he county obligation [under section 17000] to provide general relief extends to those indigents who do not qualify under specialized aid programs, ... including Medi-Cal." (62 Ops.Cal.Atty.Gen. 70, 71, fn. 1 (1979).) Moreover, the *Madera* court expressly recognized that state and federal programs "alleviate, to a greater or lesser extent, [a] [c]ounty's burden." (*Madera*, *supra*, 155 Cal.App.3d at p. 151.) In *Cooke*, the court simply made a passing reference to *Madera* in dictum describing the coverage history of Medi-Cal. (*Cooke*, *supra*, 213 Cal.App.3d at p. 411.) It neither analyzed the issue before us nor explained the meaning of the dictum that the dissent cites.

16 As we have previously explained, even before 1971 the state, through the county option, assumed much of the financial responsibility for providing medical care to adult MIP's.

17 Because *County of Los Angeles v. Commission on State Mandates*, *supra*, 32 Cal.App.4th 805, is distinguishable, we need not (and do not) express an opinion regarding the court's analysis in that decision or its conclusions.

18 The state properly does not contend that the provision of medical care to adult MIP's is not a "program" within the meaning of section 6. (See *County of Los Angeles*, *supra*, 43 Cal.3d at p. 56 [section 6 applies to "programs that carry out the governmental function of providing services to the public"].)

19 Alternatively, the 1982 legislation can be viewed as having mandated an increase in the services that counties were providing through existing section 17000 programs, by adding adult MIP's to the indigent population that counties already had to serve under that section. (See *County of Los Angeles*, *supra*, 43 Cal.3d at p. 56 ["subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs' "].)

20 In reaching a contrary conclusion, the dissent ignores the electorate's purpose in adopting section 6. The dissent also mischaracterizes our decision. We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state." (Dis. opn., *post*, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility

before adoption of section 6. Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.

21 As amended in 1982, section 16704, subdivision (c)(1), provided in relevant part: "The [county board of supervisors] shall assure that it will expend [MISA] funds only for the health services specified in Sections 14132 and 14021 provided to persons certified as eligible for such services pursuant to Section 17000 and shall assure that it will incur no less in net costs of county funds for county health services in any fiscal year than the amount required to obtain the maximum allocation under Section 16702." (Stats. 1982, ch. 1594, § 70, p. 6346.) Section 16704, subdivision (c)(3), provided in relevant part: "Any person whose income and resources meet the income and resource criteria for certification for services pursuant to Section 14005.7 other than for the aged, blind, or disabled, shall not be excluded from eligibility for services to the extent that state funds are provided. Such persons may be held financially liable for these services based upon the person's ability to pay. A county may not establish a payment requirement which would deny medically necessary services. This section shall not be construed to mandate that a county provide any specific level or type of health care service .... The provisions of this paragraph shall become inoperative if a court ruling is issued which decrees that the provisions of this paragraph mandates [*sic*] that additional state funds be provided and which requires that additional state reimbursement be made to counties for costs incurred under this paragraph. This paragraph shall be operative only until June 30, 1983, unless a later enacted statute extends or deletes that date." (Stats. 1982, ch. 1594, § 70, pp. 6346-6347.)

22 Section 17001 provides: "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county."

23 We disapprove *Bay General*, *supra*, 156 Cal.App.3d at pages 959-960, insofar as it (1) states that a county's responsibility under section 17000 extends only to indigents as defined by the county's board of supervisors, and (2) suggests that a county may refuse to provide medical care to persons who are "indigent" within the meaning of section 17000 but do not qualify for Medi-Cal.

24 Our conclusion is limited to this aspect of a county's duty under section 17000. We express no opinion regarding the scope of a county's duty to provide other forms of relief and support under section 17000.

25 The 1982 legislation made the subdivision operative until June 30, 1983. (Stats. 1982, ch. 1594, § 70, p. 6347.) In 1983, the Legislature repealed and reenacted section 16704, and extended the operative date of subdivision (c)(3) to June 30, 1985. (Stats. 1983, ch. 323, §§ 131.1, 131.2, pp. 1079-1080.)

26 Given our analysis, we express no opinion about the statement in *Cooke*, *supra*, 213 Cal.App.3d at page 412, footnote 9, that the "life" of section 16704, subdivision (c)(3), "was implicitly extended" by the fact that the "paragraph remains in the statute despite three subsequent amendments to the statute ...."

27 Although asserting that nothing required San Diego to provide "all" adult MIP's with medical care, the state never precisely identifies which adult MIP's were legally entitled to medical care and which ones were not. Nor does the state ever directly assert that some adult MIP's were not "indigent persons" under section 17000. On the contrary, despite its argument, the state seems to suggest that San Diego's medical care obligation under section 17000 extended even beyond adult MIP's. It asserts: "At no time prior to or following 1983 did Medi-Cal ever provide medical services to, or pay for medical services provided to, all persons who could not afford such services and therefore might be deemed 'medically indigent.' ... For some period prior to 1983, Medi-Cal paid for services for *some* indigent adults under its 'medically indigent adults' category.... [A]t *no time* did the state ever assume financial responsibility for all adults who are too indigent to afford health care." (Original italics.)

28 The state argues that former subdivision (c) is irrelevant to our determination because, like section 17000, it "predate[d] 1975." Our previous analysis rejecting this argument in connection with section 17000 applies here as well.

29 Statutes 1992, chapter 719, section 2, page 2882, repealed former subdivision (c) and enacted a new subdivision (c) in its place. This urgency measure was approved by the Governor on September 14, 1992, and filed with the Secretary of State on September 15, 1992.

30 We disapprove *Cooke*, *supra*, 213 Cal.App.3d at page 410, to the extent it held that Health and Safety Code section 1442.5, former subdivision (c), was merely "a limitation on a county's ability to close facilities or reduce services provided in those facilities," and was irrelevant absent a claim that a "county facility was closed [or] that any services in [the] county ... were reduced." Although former subdivision (c) was contained in a section that dealt in part with closures and service reductions, nothing limited its reach to that context.

31 During further proceedings before the Commission to determine the amount of reimbursement due San Diego, the state may argue that particular services available under San Diego's CMS program exceeded statutory requirements.

32 Consistent with the electorate's direction, in its application for CHIP funds, San Diego assured the state that it would "[e]xpend [CHIP] funds only to supplement existing levels of services provided and not to fund existing levels of service ...." Because San Diego's initial decision to seek CHIP funds was voluntary, the evidence it cites of state threats to withhold CHIP funds if it eliminated the CMS program is irrelevant.

33 Former section 16991, subdivision (a)(5), provided in full: "If the sum of funding that a county received from its allocation pursuant to Section 16703, the amount of reimbursement it received from federal State Legalization Impact Assistance Grant [(SLIAG)] funding for indigent care, and its share of funding provided in this section is less than the amount of funding the county received pursuant to Section 16703 in fiscal year 1988-89 the state shall reimburse the county for the amount of the difference. For the 1990-91 fiscal year, if the sum of funding received from its allocation, pursuant to Section 16703 and the amount of reimbursement it received from [SLIAG] Funding for indigent care that year is less than the amount of funding the county received pursuant to Section 16703 in the 1988-89 fiscal year, the state shall reimburse the amount of the difference. If the department determines that the county has not made reasonable efforts to document and claim federal SLIAG funding for indigent care, the department shall deny the reimbursement." (Stats. 1989, ch. 1331, § 9, p. 5428.)

34 Despite its argument here, when it initially appealed, the state apparently recognized that it could no longer challenge the May 1991 order. In its March 1993 notice of appeal, it appealed only from the judgment entered December 18, 1992, and did not mention the May 1991 order.

* Presiding Justice, Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

† Associate Justice, Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

1 I agree with the majority that the superior court had jurisdiction to decide this case. (Maj. opn., *ante,* at pp. 86-90.)

2 Section 6 of article XIII B pertains to two types of mandates: new programs and higher levels of service. The words "such subvention" in the first paragraph of this constitutional provision makes the subdivision (c) exemption applicable to both types of mandates.

53 Cal.3d 482, 808 P.2d 235, 280 Cal.Rptr. 92
Supreme Court of California

COUNTY OF FRESNO, Plaintiff and Appellant,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents.

No. S015637.
Apr 22, 1991.

SUMMARY

A county filed a test claim with the Commission on State Mandates seeking, under Cal. Const., art. XIII B, § 6 (state must provide subvention of funds to reimburse local governments for costs of state- mandated programs or increased levels of service), reimbursement from the state for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.). The commission found the county had the authority to charge fees to pay for the program, and the program was thus not a reimbursable state-mandated program under Gov. Code, § 17556, subd. (d), which provides that costs are not state-mandated if the agency has authority to levy a charge or fee sufficient to pay for the program. The county filed a petition for writ of mandate and a complaint for declaratory relief against the state. The trial court denied relief. (Superior Court of Fresno County, No. 379518-4, Gary S. Austin, Judge.) The Court of Appeal, Fifth Dist., No. F011925, affirmed.

The Supreme Court affirmed the decision of the Court of Appeal. The court held, as to the single issue on review, that Gov. Code, § 17556, subd. (d), was facially constitutional under Cal. Const., art. XIII B, § 6. It held art. XIII B was not intended to reach beyond taxation, and § 6 was included in art. XIII B in recognition that Cal. Const., art. XIII A, severely restricted the taxing powers of local governments. It held that art. XIII B, § 6 was designed to protect the tax revenues of local governments from state mandates that would require an expenditure of such revenues and, when read in textual and historical context, requires subvention only when the costs in question can be recovered solely from tax revenues. Accordingly, the court held that Gov. Code, § 17556, subd. (d), effectively construed the term "cost" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that such a construction is altogether sound. (Opinion by Mosk, J., with Lucas, C. J., Broussard, ***483** Panelli, Kennard, JJ., and Best (Hollis G.), J.,* concurring. Separate concurring opinion by Arabian, J.)

HEADNOTES

Classified to California Digest of Official Reports

([1])
State of California § 11--Reimbursement to Local Governments for State-mandated Costs--Costs for Which Fees May Be Levied--Validity of Exclusion.
In a proceeding by a county seeking reversal of a decision by the Commission on State Mandates that the state was not required by Cal. Const., art. XIII B, § 6, to reimburse the county for costs incurred in implementing the Hazardous Materials Release Response Plans and Inventory Act (Health & Saf. Code, § 25500 et seq.), the trial court properly found that Gov. Code, § 17556, subd. (d) (costs are not state-mandated if agency has authority to levy charge or fee sufficient to pay for program), was facially constitutional. Cal. Const., art. XIII B, was intended to apply to taxation and was not intended to reach beyond taxation, as is apparent from its language and confirmed by its history. It was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues; read in its textual and historical contexts, requires subvention only when the costs in question can be recovered solely from tax revenues. Gov. Code, § 17556, subd. (d), effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes, and that construction is altogether sound. Accordingly, Gov. Code, § 17556, subd. (d), is facially constitutional under Cal. Const., art. XIII B, § 6.

[See **Cal.Jur.3d (Rev),** Municipalities, § 361; 9 **Witkin,** Summary of Cal. Law (9th ed. 1988) Taxation, § 124.]

COUNSEL
Max E. Robinson, County Counsel, and Pamela A. Stone, Deputy County Counsel, for Plaintiff and Appellant.
B. C. Barnum, County Counsel (Kern), and Patricia J. Randolph, Deputy County Counsel, as Amici Curiae on behalf of Plaintiff and Appellant. ***484**
John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, and Richard M. Frank, Deputy Attorney General, for Defendants and Respondents.

MOSK, J.

We granted review in this proceeding to decide whether section 17556, subdivision (d), of the Government Code (section 17556(d)) is facially valid under article XIII B, section 6, of the California Constitution (article XIII B, section 6).

Article XIII B, section 6, provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (a) Legislative mandates requested by the local agency affected; [¶] (b) Legislation defining a new crime or changing an existing definition of a crime; or [¶] (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

The Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. (Gov. Code, § 17500.) It created a "quasi-judicial body" (*ibid.*) called the Commission on State Mandates (commission) (*id.*, § 17525) to "hear and decide upon [any] claim" by a local government that the local government "is entitled to be reimbursed by the state for costs" as required by article XIII B, section 6. (Gov. Code, § 17551, subd. (a).) It defined "costs" as "costs mandated by the state"—"any increased costs" that the local government "is required to incur ... as a result of any statute ..., or any executive order implementing any statute ..., which mandates a new program or higher level of service of any existing program" within the meaning of article XIII B, section 6. (Gov. Code, § 17514.) Finally, in section 17556(d) it declared that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

For the reasons discussed below, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6. ***485**

I. Facts and Procedural History

The present proceeding arose after the Legislature enacted the Hazardous Materials Release Response Plans and Inventory Act (Act). (Health & Saf. Code, § 25500 et seq.) The Act establishes minimum statewide standards for business and area plans relating to the handling and release or threatened release of hazardous materials. (*Id.*, § 25500.) It requires local governments to implement its provisions. (*Id.*, § 25502.) To cover the costs they may incur, it authorizes them to collect fees from those who handle hazardous materials. (*Id.*, § 25513.)

The County of Fresno (County) implemented the Act but chose not to impose the authorized fees. Instead, it filed a so-called "test" or initial claim with the commission (Gov. Code, § 17521) seeking reimbursement from the State of California (State) under article XIII B, section 6. After a hearing, the commission rejected the claim. In its statement of decision, the commission made the following findings, among others: the Act constituted a "new program"; the County did indeed incur increased costs; but because it had authority under the Act to levy fees sufficient to cover such costs, section 17556(d) prohibited a finding of reimbursable costs.

The County then filed a petition for writ of mandate and complaint for declaratory relief against the State, the commission, and others, seeking vacation of the commission's decision and a declaration that section 17556(d) is unconstitutional under article XIII B, section 6. While the matter was pending, the commission amended its statement of decision to include another basis for denial of the test claim: the Act did not constitute a "program" under the rationale of *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46 [233 Cal.Rptr. 38, 729 P.2d 202] (*County of Los Angeles*), because it did not impose unique requirements on local governments.

After a hearing, the trial court denied the petition and effectively dismissed the complaint. It determined, inter alia, that mandate under Code of Civil Procedure section 1094.5 was the County's sole remedy, and that the commission was the sole properly named respondent. It also determined that section 17556(d) is constitutional under article XIII B, section 6. It did not address the

question whether the Act constituted a "program" under *County of Los Angeles.* Judgment was entered accordingly.

The Court of Appeal affirmed. It held the Act did indeed constitute a "program" under *County of Los Angeles, supra,* 43 Cal.3d 46. It also held section 17556(d) is constitutional under article XIII B, section 6. ***486**

([1]) We granted review to decide a single issue, i.e., whether section 17556(d) is facially constitutional under article XIII B, section 6.

II. Discussion

We begin our analysis with the California Constitution. At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new "special taxes." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

"Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes." (*City of Sacramento, supra,* 50 Cal.3d at p. 59, fn. 1.)

Article XIII B of the Constitution was intended to apply to taxation—specifically, to provide "permanent protection for taxpayers from excessive taxation" and "a reasonable way to provide discipline in tax spending at state and local levels." (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument in favor of Prop. 4, p. 18.) To this end, it establishes an "appropriations limit" for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no "appropriations subject to limitation" in excess thereof (*id.,* § 2). (See *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 446.) It defines the relevant "appropriations subject to limitation" as "any authorization to expend during a fiscal year the proceeds of taxes ...." (Cal. Const., art. XIII B, § 8, subd. (b).) It defines "proceeds of taxes" as including "all tax revenues and the proceeds to ... government from," inter alia, "regulatory licenses, user charges, and user fees *to the extent that such proceeds exceed the costs reasonably borne by* [*government*] *in providing the regulation, product, or service* ...." (Cal. Const., art. XIII B, § 8, subd. (c), italics added.) Such "excess" proceeds from "licenses," "charges," and "fees" "are but ***487** *taxes*" for purposes here. (*County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 451, italics in original.)

Article XIII B of the Constitution, however, was not intended to reach beyond taxation. That fact is apparent from the language of the measure. It is confirmed by its history. In his analysis, the Legislative Analyst declared that Proposition 4 "would not restrict the growth in appropriations financed from other [i.e., nontax] sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts." (Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), analysis by Legislative Analyst, p. 16.)

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles, supra,* 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6 [244 Cal.Rptr. 677, 750 P.2d 318].) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues.*

In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the

statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes. Such a construction is altogether sound. As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes. It follows that section 17556(d) is facially constitutional under article XIII B, section 6.

The County argues to the contrary. It maintains that section 17556(d) in essence creates a new exception to the reimbursement requirement of article ***488** XIII B, section 6, for self-financing programs and that the Legislature cannot create exceptions to the reimbursement requirement beyond those enumerated in the Constitution.

We do not agree that in enacting section 17556(d) the Legislature created a new exception to the reimbursement requirement of article XIII B, section 6. As explained, the Legislature effectively—and properly—construed the term "costs" as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the requirement. Therefore, they need not be explicitly excepted from its reach.

The County nevertheless argues that no matter how characterized, section 17556(d) is indeed inconsistent with article XIII B, section 6. Its contention is in substance as follows: the source of section 17556(d) is former Revenue and Taxation Code section 2253.2; at the time of Proposition 4, subdivision (b)(4) of that former section stated that the State Board of Control shall not allow a claim for reimbursement of costs mandated by the state if the legislation contains a self-financing authority; the drafters of Proposition 4 incorporated some of the provisions of former Revenue and Taxation Code section 2253.2 into article XIII B, section 6, but did not incorporate former subdivision (b)(4); their failure to do so reveals an intent to treat as immaterial the presence or absence of a "self-financing" provision; and such an intent is confirmed by the "legislative history" set out at page 55 in Spirit of 13, Inc., Summary of Proposed Implementing Legislation and Drafters' Intent: "the state may not arbitrarily declare that it is not going to comply with Section 6 ... if the state provides new compensating revenues."

In our view, the County's argument is unpersuasive. Even if we assume arguendo that the intent of those who drafted Proposition 4 is as claimed, what is crucial here is the intent of those who voted for the measure. (See *County of Los Angeles, supra,* 43 Cal.3d 46, 56.) There is no substantial evidence that the voters sought what the County assumes the drafters desired. Moreover, the "legislative history" cited above cannot be considered relevant; it was written and circulated after the passage of Proposition 4. As such, it could not have affected the voters in any way.

To avoid this result, the County advances one final argument: "Based on the authority of [section 17556(d)], the Commission on State Mandates refuses to hear mandates on the merits once it finds that the authority to charge fees is given by the Legislature. This position is taken whether or not fees can actually or legally be charged to recover the entire costs of the program." ***489**

The County appears to be making one or both of the following arguments: (1) the commission applies section 17556(d) in an unconstitutional manner; or (2) the Act's self-financing authority is somehow lacking. Such contentions, however, miss the designated mark. They raise questions bearing on the constitutionality of section 17556(d) as applied and the legal efficacy of the authority conferred by the Act. The sole issue on review, however, is the facial constitutionality of section 17556(d).

III. Conclusion

For the reasons set forth above, we conclude that section 17556(d) is facially constitutional under article XIII B, section 6.

The judgment of the Court of Appeal is affirmed.

Lucas, C. J., Broussard, J., Panelli, J., Kennard, J., and Best (Hollis G.), J.,[*] concurred.

ARABIAN, J.,

Concurring.

I concur in the determination that Government Code section 17556, subdivision (d)[1] (section 17556(d)), does not offend article XIII B, section 6, of the California

Constitution (article XIII B, section 6). In my estimation, however, the constitutional measure of the issue before us warrants fuller examination than the majority allow. A literalistic analysis begs the question of whether the Legislature had the authority to act statutorily upon a subject matter the electorate has spoken to constitutionally through the initiative process.

Article XIII B, section 6, unequivocally commands that "the state shall provide a subvention of funds to reimburse ... local government for the costs of [a new] program or increased level of service" except as specified therein. Article XIII B does not define this reference to "costs." (See Cal. Const., art. XIII B, § 8.) Rather, the Legislature assumed the task of explicating the related concept of "costs mandated by the state" when it created the Commission on State Mandates and enacted procedures intended to implement article XIII B, section 6, more effectively. (See § 17500 et seq.) As part of this statutory scheme, it exempted the state from its constitutionally imposed subvention obligation under certain enumerated circumstances. Some of these exemptions the electorate expressly contemplated in approving article XIII B, section 6 (§ 17556, subds. (a), (c), & (g); see § 17514), while others are strictly of legislative formulation and derive from ***490** former Revenue and Taxation Code section 2253.2. (§ 17556, subds. (b), (d), (e), & (f).)

The majority find section 17556 valid notwithstanding the mandatory language of article XIII B, section 6, based on the circular and conclusory rationale that "the Legislature effectively—and properly—construed the term 'costs' as excluding expenses that are recoverable from sources other than taxes. In a word, such expenses are outside of the scope of the [subvention] requirement. Therefore, they need not be explicitly excepted from its reach." (Maj. opn., *ante*, at p. 488.) In my view, excluding or otherwise removing something from the purview of a law is tantamount to creating an exception thereto. When an exclusionary implication is clear from the import or effect of the statutory language, use of the word "except" should not be necessary to construe the result for what it clearly is. In this circumstance, "I would invoke the folk wisdom that if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck." (*In re Deborah C.* (1981) 30 Cal.3d 125, 141 [177 Cal.Rptr. 852, 635 P.2d 446] (conc. opn. by Mosk, J.).)

Of at least equal importance, section 17500 et seq. constitutes a legislative implementation of article XIII B, section 6. As such, the overall statutory scheme must comport with the express constitutional language it was designed to effectuate as well as the implicit electoral intent. Eschewing semantics, I would squarely and forthrightly address the fundamental and substantial question of whether the Legislature could lawfully enlarge upon the scope of article XIII B, section 6, to include exceptions not originally designated in the initiative.

I do not hereby seek to undermine the majority holding but rather to set it on a firmer constitutional footing. "[S]tatutes must be given a reasonable interpretation, one which will carry out the intent of the legislators and render them valid and operative rather than defeat them. In so doing, sections of the Constitution, as well as the codes, will be harmonized where reasonably possible, in order that all may stand." (*Rose v. State of California* (1942) 19 Cal.2d 713, 723 [123 P.2d 505]; see also *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202].) To this end, it is a fundamental premise of our form of government that "the Constitution of this State is not to be considered as a grant of power, but rather as a restriction upon the powers of the Legislature; and ... it is competent for the Legislature to exercise all powers not forbidden ...." (*People v. Coleman* (1854) 4 Cal. 46, 49.) "Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the ***491** Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] *In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.'* [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 [97 Cal.Rptr. 1, 488 P.2d 161], italics added.) "Specifically, the express enumeration of legislative powers is not an exclusion of others not named unless accompanied by negative terms. [Citations.]" (*Dean v. Kuchel* (1951) 37 Cal.2d 97, 100 [230 P.2d 811].)

As the majority opinion impliedly recognizes, neither the language nor the intent of article XIII B conflicts with the exercise of legislative prerogative we review today. Of paramount significance, neither section 6 nor any other provision of article XIII B prohibits statutory delineation of additional circumstances obviating reimbursement for state mandated programs. (See *Dean v. Kuchel, supra,* 37

Cal.2d at p. 101; *Roth Drugs, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 729 [57 P.2d 1022]; see also *Kehrlein v. City of Oakland* (1981) 116 Cal.App.3d 332, 338 [172 Cal.Rptr. 111].)

Furthermore, the initiative was "[b]illed as a flexible way to provide discipline in government spending" by creating appropriations limits to restrict the amount of such expenditures. (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447 [170 Cal.Rptr. 232]; see Cal. Const., art. XIII B, § 1.) By their nature, user fees do not affect the equation of local government spending: While they facilitate implementation of newly mandated state programs or increased levels of service, they are excluded from the "appropriations subject to limitations" calculation and its attendant budgetary constraints. (See Cal. Const., art. XIII B, § 8; see also *City Council v. South* (1983) 146 Cal.App.3d 320, 334 [194 Cal.Rptr. 110]; *County of Placer v. Corin, supra,* 113 Cal.App.3d at pp. 448-449; Cal. Const., art. XIII B, § 3, subd. (b); cf. *Russ Bldg. Partnership v. City and County of San Francisco* (1987) 199 Cal.App.3d 1496, 1505 [246 Cal.Rptr. 21] [" 'fees not exceeding the reasonable cost of providing the service or regulatory activity for which the fee is charged and which are not levied for general revenue purposes, have been considered outside the realm of "special taxes" [limited by California Constitution, article XIII A]' "]; *Terminal Plaza Corp. v. City* ***492** *and County of San Francisco* (1986) 177 Cal.App.3d 892, 906 [223 Cal.Rptr. 379] [same].)

This conclusion fully accommodates the intent of the voters in adopting article XIII B, as reflected in the ballot materials accompanying the proposition. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246 [149 Cal.Rptr. 239, 583 P.2d 1281].) In general, these materials convey that "[t]he goals of article XIII B, of which section 6 is a part, were to protect residents from excessive taxation and government spending." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 61; *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 109- 110 [211 Cal.Rptr. 133, 695 P.2d 220].) To the extent user fees are not borne by the general public or applied to the general revenues, they do not bear upon this purpose. Moreover, by imputation, voter approval contemplated the continued imposition of reasonable user fees outside the scope of article XIII B. (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Limitation of Government Appropriations, Special Statewide Elec. (Nov. 6, 1979), arguments in favor of and against Prop. 4, p. 18 [initiative "Will curb excessive user fees imposed by local government" but "will Not eliminate user fees ..."]; see *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 452.)

"The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 56; see *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66 [266 Cal.Rptr. 139, 785 P.2d 522].) "Section 6 had the additional purpose of precluding a shift of financial responsibility for carrying out governmental functions from the state to local agencies which had had their taxing powers restricted by the enactment of article XIII A in the preceding year and were ill equipped to take responsibility for any new programs." (*County of Los Angeles v. State of California, supra,* 43 Cal.3d at p. 61.) An exemption from reimbursement for state mandated programs for which local governments are authorized to charge offsetting user fees does not frustrate or compromise these goals or otherwise disturb the balance of local government financing and expenditure.[2] (See ***493** *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 452, fn. 7.) Article XIII B, section 8, subdivision (c), specifically includes regulatory licenses, user charges, and user fees in the appropriations limitation equation only "to the extent that those proceeds exceed the costs reasonably borne by [the governmental] entity in providing the regulation, product, or service ...."

The self-executing nature of article XIII B does not alter this analysis. "It has been uniformly held that the legislature has the power to enact statutes providing for reasonable regulation and control of rights granted under constitutional provisions. [Citations.]" (*Chesney v. Byram* (1940) 15 Cal.2d 460, 465 [101 P.2d 1106].) " ' "Legislation may be desirable, by way of providing convenient remedies for the protection of the right secured, or of regulating the claim of the right so that its exact limits may be known and understood; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purpose, and must not in any particular attempt to narrow or embarrass it." [Citations.]' " (*Id.,* at pp. 463-464; see also *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].) Section 17556(d) is not "merely [a] transparent attempt[] to do indirectly that which cannot lawfully be done directly." (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 541 [234 Cal.Rptr. 795].) On the contrary, it creates no conflict with the constitutional

directive it subserves. Hence, rather than pursue an interpretive expedient, this court should expressly declare that it operates as a valid legislative implementation thereof.

"[Initiative] provisions of the Constitution and of charters and statutes should, as a general rule, be liberally construed in favor of the reserved power. [Citations.] As opposed to that principle, however, 'in examining and ascertaining the intention of the people with respect to the scope and nature of those ... powers, it is proper and important to consider what the consequences of applying it to a particular act of legislation would be, and if upon such consideration it be found that by so applying it the inevitable effect would be greatly to impair or wholly destroy the efficacy of some other governmental power, the practical application of which is essential and, perhaps, ... indispensable, to the convenience, comfort, and well-being of the inhabitants of certain legally established districts or subdivisions of the state or of the whole state, then in such case the courts may and should assume that the people intended no such result to flow from the application of those powers and that they do not so apply.' [Citation.]" (*Hunt v. Mayor & Council of Riverside* (1948) 31 Cal.2d 619, 628-629 [191 P.2d 426].) ***494**

This court is not infrequently called upon to resolve the tension of apparent or actual conflicts in the express will of the people.[3] Whether that expression emanates directly from the ballot or indirectly through legislative implementation, each deserves our fullest estimation and effectuation. Given the historical and abiding role of government by initiative, I decline to circumvent that responsibility and accept uncritically the Legislature's self-validating statutory scheme as the basis for approving the exercise of its prerogative. It is not enough to say a broader constitutional analysis yields the same result and therefore is unnecessary. We provide a higher quality of justice harmonizing rather than ignoring the divers voices of the people, for such is the nature of our office. ***495**

Footnotes

* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

* Presiding Justice, Court of Appeal, Fifth Appellate District, assigned by the Chairperson of the Judicial Council.

1 Unless otherwise indicated, all further statutory references are to the Government Code.

2 This conclusion also accords with the traditional and historical role of user fees in promoting the multifarious functions of local government by imposing on those receiving a service the cost of providing it. (Cf. *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 454 ["Special assessments, being levied only for improvements that benefit particular parcels of land, and not to raise general revenues, are simply not the type of exaction that can be used as a mechanism for circumventing these tax relief provisions. [Citation.]"].)

3 See, e.g., *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167 [260 Cal.Rptr. 545, 776 P.2d 247]; *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197 [182 Cal.Rptr. 324, 643 P.2d 941]; *California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171 [148 Cal.Rptr. 875, 583 P.2d 729]; *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575 [131 Cal.Rptr. 361, 551 P.2d 1193]; *Blotter v. Farrell* (1954) 42 Cal.2d 804 [270 P.2d 481]; *Dean v. Kuchel, supra,* 37 Cal.2d 97; *Hunt v. Mayor & Council of Riverside, supra,* 31 Cal.2d 619.

55 Cal.App.4th 976
Court of Appeal, Fourth District, Division 1, California.

REDEVELOPMENT AGENCY OF THE CITY OF SAN MARCOS, Plaintiff and Appellant,
v.
CALIFORNIA COMMISSION ON STATE MANDATES, Defendant and Respondent.
California Department of Finance,
Intervener and Respondent.

No. D026195.
|
May 30, 1997.
|
Review Denied Sept. 3, 1997.

Synopsis

City redevelopment agency petitioned for writ of administrative mandamus to challenge decision of Commission on State Mandates that agency was not entitled to reimbursement from state for certain deposits made into housing fund as required by statute. The Superior Court, San Diego **County**, No. 686818, Sheridan E. Reed and Herber B. Hoffman, JJ., denied petition. Agency appealed. The Court of Appeal, Huffman, J., held that Constitution did not require state to reimburse agency for deposits agency had made of its tax increment financing proceeds.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (9)

[1] **States** State expenses and charges and statutory liabilities

Determination of whether statutes established mandate under section of Constitution requiring state to reimburse local government for costs of state-mandated new program or higher level of service is question of law. West's Ann.Cal. Const. Art. 13B, § 6.

1 Cases that cite this headnote

[2] **States** State expenses and charges and statutory liabilities

Where substantial evidence test is applied by trial court in reviewing decision of Commission on State Mandates, Court of Appeal is generally confined to inquiring whether substantial evidence supports trial court's findings and judgment; however, Court of Appeal independently reviews trial court's legal conclusions about meaning and effect of constitutional and statutory provisions. West's Ann.Cal.Gov.Code § 17559.

[3] **States** State expenses and charges and statutory liabilities

Purpose of section of Constitution requiring state to reimburse local government for costs of state-mandated new program or higher level of service is to preclude state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to constitutional taxing and spending limitations. West's Ann.Cal. Const. Art. 13B, § 6.

3 Cases that cite this headnote

[4] **States** State expenses and charges and statutory liabilities

Constitution did not require state to reimburse city redevelopment agency for 20% deposits agency had made, as required by statute, of its tax increment financing proceeds into housing fund for purposes of improving supply of affordable housing; such use of tax increment financing was not "cost" within meaning of section of Constitution requiring state to reimburse local government for costs of state-mandated new program or higher level of services. West's Ann.Cal. Const. Art. 13B, § 6; West's Ann.Cal.Health & Safety Code §§ 33334.2, 33334.3.

5 Cases that cite this headnote

[5] **Constitutional Law** Nature and scope in general

Constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by language used.

[6] **States** Limitation of use of funds or credit
Taxation Power of State

Goals of constitutional provisions pertaining to tax and government spending limitations are to protect California residents from excessive taxation and government spending. West's Ann.Cal. Const. Art. 13A, § 1 et seq.; Art. 13B, § 1 et seq.

[7] **States** State expenses and charges and statutory liabilities

Central purpose of section of Constitution requiring state to reimburse local government for costs of state-mandated new program or higher level of service is to prevent state's transfer of cost of government from itself to local level. West's Ann.Cal. Const. Art. 13B, § 6.

1 Cases that cite this headnote

[8] **States** Limitation of use of funds or credit

Tax increment financing is not within scope of article of Constitution setting forth government spending limitations. West's Ann.Cal. Const. Art. 13B, § 1 et seq.

1 Cases that cite this headnote

[9] **States** State expenses and charges and statutory liabilities

Under section of Constitution requiring state to provide subvention of funds to reimburse local government for costs of state-mandated new program or higher level of services, subvention is required only when costs in question can be recovered solely from tax revenues; thus, no state duty of subvention is triggered where local agency is not required to expend its proceeds of taxes. West's Ann.Cal. Const. Art. 13B, § 6.

5 Cases that cite this headnote

Attorneys and Law Firms

****271** ***978** Higgs, Fletcher & Mack and John Morris, for Plaintiff and Appellant.

Gary D. Hori, Sacramento, for Defendant and Respondent.

***979** Daniel E. Lungren, Attorney General, Robert L. Mukai, Chief Asst. Attorney General, Linda A. Cabatic and Daniel G. Stone, Deputy Attorneys General, for Intervener and Respondent.

Opinion

HUFFMAN, Associate Justice.

The California Commission on State Mandates (the Commission) denied a test claim by the Redevelopment Agency of the City of San Marcos (the Agency) (Gov.Code, § 17550 et seq.), which sought a determination that the State of California should reimburse the Agency for monies transferred into its Low and Moderate Income Housing Fund (the Housing Fund) pursuant to Health and Safety Code sections 33334.2 [1] and 33334.3. Those sections require a 20 percent deposit of the particular form of financing received by the Agency, tax increment financing generated from its project areas, for purposes of improving the supply of affordable housing. (see fn. 2) The Agency claimed that this tax increment financing should not be subject to state control of the allocations made to various funds and that such control constituted a state-mandated new program or higher level of service for which reimbursement or subvention was required under article XIII B of the California Constitution, section 6 (hereafter section 6). [2] (Cal. Const., art. XVI, § 16; § 33670.)

The Agency brought a petition for writ of administrative mandamus to challenge the decision of the Commission. (Code Civ. Proc., § 1094.5; Gov.Code, § 17559.) The superior court denied the petition, ruling that the source of funds used by the Agency for redevelopment, tax increment financing, was exempt pursuant to section 33678 from the

scope of section 6, as not constituting "proceeds of taxes" which are governed by that section. The superior court did not rule upon the alternative grounds of decision stated by the Commission, i.e., the 20 percent set-aside requirement for low and moderate income housing did not impose a new program or higher level of service in an existing program within the meaning of section 6, and, further, there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency.

**272 The Agency appeals the judgment denying its petition for writ of mandate. For the reasons set forth below, we affirm.

*980 I

Procedural Context

This test claim was litigated before the Commission pursuant to statutory procedures for determining whether a statute imposes state-mandated costs upon a local agency which must be reimbursed, through a subvention of funds, under section 6. (Gov.Code, § 17500 et seq.)[3] The Commission hearing consisted of oral argument on the points and authorities presented.

[1] [2] Under Government Code section 17559, review by administrative mandamus is the exclusive method of challenging a Commission decision denying a subvention claim. "The determination whether the statutes here at issue established a mandate under section 6 is a question of law. [Citation.]" (County of San Diego v. State of California (1997) 15 Cal.4th 68, 109, 61 Cal.Rptr.2d 134, 931 P.2d 312.) On appellate review, we apply these standards:

> "Government Code section 17559 governs the proceeding below and requires that the trial court review the decision of the Commission under the substantial evidence standard. Where the substantial evidence test is applied by the trial court, we are generally confined to inquiring whether substantial evidence supports the court's findings and judgment. [Citation.] However, we independently review the superior court's legal conclusions about the meaning and effect of constitutional and statutory provisions. [Citation.]" (City of San Jose v. State of California (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521.)

II

Statutory Schemes

Before we outline the statutory provisions setting up tax increment financing for redevelopment agencies, we first set forth the Supreme Court's recent summary of the history and substance of the law applicable to state mandates, such as the Agency claims exist here:

> "Through adoption of Proposition 13 in 1978, the voters added article XIIIA to the California Constitution, which 'imposes a limit on the power of state and local governments to *981 adopt and levy taxes. [Citation.]' [Citation.] The next year, the voters added article XIIIB to the Constitution, which 'impose[s] a complementary limit on the rate of growth in governmental spending.' [Citation.] These two constitutional articles 'work in tandem, together restricting California governments' power both to levy and to spend for public purposes.' [Citation.] Their goals are 'to protect residents from excessive taxation and government spending. [Citation.]' [Citation.]" (County of San Diego v. State of California, supra, 15 Cal.4th at pp. 80–81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

Section 6, part of article XIIIB and the provision here at issue, requires 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 to reimburse such local government for *the costs of such program* or increased level of service...." (County of San Diego v. State of California, supra, 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312, italics added.) Certain exceptions are then stated, none of which is relevant here.[4]

**273 [3] In County of San Diego v. State of California, supra, 15 Cal.4th at page 81, 61 Cal.Rptr.2d 134, 931 P.2d 312, the Supreme Court explained that section 6 represents a recognition that together articles XIIIA and XIIIB severely restrict the taxing and spending powers of local agencies. The purpose of the section is to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIIIA and XIIIB.

(*County of San Diego v. State of California, supra,* at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.)

To evaluate the Agency's argument that the provisions of sections 33334.2 and 33334.3, requiring a deposit into the housing fund of 20 percent of the tax increment financing received by the Agency, impose this type of reimbursable governmental program or a higher level of service under an existing program, we first review the provisions establishing financing for redevelopment agencies. Such agencies have no independent powers of taxation (*Huntington Park Redevelopment Agency v. Martin* (1985) 38 **Cal.3d** ***982** 100, 106, 211 Cal.Rptr. 133, 695 P.2d 220), but receive a portion of tax revenues collected by other local agencies from property within a redevelopment project area, which may result from the following scheme:

> "Redevelopment agencies finance real property improvements in blighted areas. Pursuant to article XVI, section 16 of the Constitution, these agencies are authorized to use tax increment revenues for redevelopment projects. The constitutional mandate has been implemented through the Community Redevelopment Law (Health & Saf.Code, § 33000 et seq.). [¶] The Community Redevelopment Law authorizes several methods of financing; one is the issuance of tax allocation bonds. Tax increment revenue, the increase in annual property taxes attributable to redevelopment improvements, provides the security for tax allocation bonds. Tax increment revenues are computed as follows: The real property within a redevelopment project area is assessed in the year the redevelopment plan is adopted. Typically, after redevelopment, property values in the project area increase. The taxing agencies (e.g., city, **county**, school or special district) keep the tax revenues attributable to the original assessed value and pass the portion of the assessed property value which exceeds the original assessment on to the redevelopment agency. (Health & Saf.Code, §§ 33640, 33641, 33670, 33675). In short, tax increment financing permits a redevelopment agency to take advantage of increased property tax revenues in the project areas without an increase in the tax rate. This scheme for redevelopment financing has been a part of the California Constitution since 1952. (Cal. Const., art. XVI, § 16.)" (*Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016–1017, 214 Cal.Rptr. 626.) [5]

In *Brown v. Community Redevelopment Agency, supra,* 168 Cal.App.3d at pages 1016–1018, 214 Cal.Rptr. 626, the court determined that by enacting section 33678, the Legislature interpreted article XIIIB of the Constitution as not broad enough in reach to cover the raising or spending of tax increment revenues by redevelopment agencies. Specifically, the court decided the funds a redevelopment agency receives from tax increment financing do not constitute "proceeds of taxes" subject to article XIIIB appropriations limits. (****274** *Brown v. Community Redevelopment Agency, supra,* at p. 1019, 214 Cal.Rptr. 626). [6] This ruling was based on section 33678, providing in pertinent part:

> "This section implements and fulfills the intent ... of Article XIII B and Section 16 of Article ***983** XVI of the California Constitution. *The allocation and payment to an agency of the portion of taxes specified in subdivision (b) of Section 33670 for the purpose of paying principal of, or interest on ... indebtedness incurred for redevelopment activity ... shall not be deemed the receipt by an agency of proceeds of taxes levied by or on behalf of the agency within the meaning of or for the purposes of Article XIII B ... nor shall such portion of taxes be deemed receipt of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B ...* or any statutory provision enacted in implementation of Article XIII B. *The allocation and payment to an agency of this portion of taxes shall not be deemed the appropriation by a redevelopment agency of proceeds of taxes levied by or on behalf of a redevelopment agency within the meaning or for purposes of Article XIII B of the California Constitution.*" (Italics added.)

In *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451, 170 Cal.Rptr. 232, the court defined "proceeds of taxes" in this way:

> "Under article XIII B, with the exception of state subventions, the items that make up the scope of " 'proceeds of taxes' " concern charges levied to raise *general revenues* for the local entity. " 'Proceeds of taxes,' " in addition to 'all tax revenues' includes 'proceeds ... from ... regulatory licenses, user charges, and user fees *[only] to the extent that such*

> *proceeds exceed the costs reasonably borne by such entity in providing the regulation, product or service. ...*' (§ 8, subd. (c).) (Italics added.) Such 'excess' regulatory or user fees are but *taxes* for the raising of general revenue for the entity. [Citations.] Moreover, to the extent that an assessment results in revenue above the cost of the improvement or is of general public benefit, it is no longer a special assessment but a tax. [Citation.] *We conclude 'proceeds of taxes' generally contemplates only those impositions which raise general tax revenues for the entity.*" (Italics added.) [7]

In light of these interrelated sections and concepts, our task is to determine whether the 20 percent Housing Fund set-aside requirement of a redevelopment agency's tax increment financing qualifies under section 6 as a "cost" of a program. As will be explained, we agree with the trial court that the resolution of this issue is sufficient to dispose of the entire matter, and ***984** accordingly we need not discuss the alternate grounds of decision stated by the Commission. [8]

III

Housing Fund Allocations: Reimbursable Costs?

1. *Arguments*

[4] The Agency takes the position that the language of section 33678 is simply inapplicable ****275** to its claim for subvention of funds required to be deposited into the Housing Fund. It points out that section 6 expressly lists three exceptions to the requirement for subvention of funds to cover the costs of state-mandated programs: (a) Legislative mandates requested by the local agency affected; (b) legislation defining or changing a definition of a crime; or (c) pre–1975 legislative mandates or implementing regulations or orders. (See fn. 4, *ante.*) None of these exceptions refers to the source of the funding originally used by the agency to pay the costs incurred for which reimbursement is now being sought. Thus, the agency argues it is immaterial that under section 33678, *for purposes of appropriations limitations,* tax increment financing is not deemed to be the "proceeds of taxes." (*Brown v. Community Redevelopment Agency, supra,* 168 Cal.App.3d at pp. 1017–1020, 214 Cal.Rptr. 626.) The Agency would apply a "plain meaning" rule to section 6 (see, e.g., *Davis v. City of* Berkeley (1990) 51 **Cal.3d** 227, 234, 272 Cal.Rptr. 139, 794 P.2d 897) and conclude that the source of the funds used to pay the program costs up front, before any subvention, is not stated in the section and thus is not relevant.

As an illustration of its argument that the source of its funds is irrelevant under section 6, the Agency cites to Government Code section 17556. That section is a legislative interpretation of section 6, creating several classes of state-mandated programs for which no state reimbursement of local agencies for costs incurred is required. In ***County of Fresno*** *v. State of California* (1991) **53 Cal.3d** 482, 487, 280 Cal.Rptr. 92, 808 P.2d 235, the Supreme Court upheld the facial constitutionality of Government Code section 17556, subdivision (d), which disallows state subvention of funds where the local government is authorized to collect service charges or fees in connection with a mandated program. The court explained that section 6 "was designed to protect the tax revenues of local governments from state mandates that ***985** would require expenditure of such revenues." (***County of Fresno*** *v. State of California, supra,* at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.) Based on the language and history of the measure, the court stated, "Article XIIIB of the Constitution, however, was not intended to reach beyond taxation." (*Ibid.*) The court therefore concluded that in view of its textual and historical context, section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues.*" (*Ibid.,* original italics.) Interpreting section 6, the court stated: "Considered within its context, the section effectively construes the term 'costs' in the constitutional provision as excluding expenses that are recoverable from sources other than taxes." (*Ibid.*) No subvention was required where the local authority could recover its expenses through fees or assessments, not taxes.

2. *Interpretation of Section 6*

[5] Here, the Agency contends the authority of ***County of Fresno*** *v. State of California, supra,* ***53*** **Cal.3d** 482, 280 Cal.Rptr. 92, 808 P.2d 235, should be narrowly read to cover only self-financing programs, and the Supreme Court's broad statements defining "costs" in this context read as mere dicta. It also continues to argue for a "plain meaning" reading of

section 6, which it reiterates does not expressly discuss the source of funds used by an agency to pay the costs of a program before any reimbursement is sought. We disagree with both of these arguments. The correct approach is to read section 6 in light of its historical and textual context. The rules of constitutional interpretation require a strict construction of section 6, because constitutional limitations and restrictions on legislative powers are not to be extended to include matters not covered by the language used. (*City of San Jose v. State of California, supra,* 45 Cal.App.4th at pp. 1816–1817, 53 Cal.Rptr.2d 521.)

[6] **[7]** The goals of articles XIIIA and XIIIB are to protect California residents from excessive taxation and government spending. (***County*** *of Los Angeles v. State of California, supra,* 15 Cal.4th at p. 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.) A central purpose of section 6 is to prevent the state's transfer of the cost of government from itself to the local level. (*City of Sacramento v. State of California, supra,* 50 **Cal.3d** at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) The related goals of these enactments require us to ****276** read the term "costs" in section 6 in light of the enactment as a whole. The "costs" for which the Agency is seeking reimbursement are its deposits of tax increment financing proceeds into the Housing Fund. Those tax increment financing proceeds are normally received pursuant to the Community Redevelopment Law (§ 33000 et seq.) when, after redevelopment, the taxing agencies collect and keep the tax revenues attributable to the original assessed value and pass on to the redevelopment agency the portion of the ***986** assessed property value which exceeds the original assessment. (*Brown v. Community Redevelopment Agency, supra,* 168 Cal.App.3d at pp. 1016–1017, 214 Cal.Rptr. 626.) Is this the type of expenditure of tax revenues of local governments, upon state mandates which require use of such revenues, against which section 6 was designed to protect? (***County*** *of* ***Fresno*** *v. State of California, supra,* **53 Cal.3d** at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235.)

3. *Relationship of Appropriations Limitations and Subvention*

We may find assistance in answering this question by looking to the type of appropriations limitations imposed by article XIIIB. In ***County*** *of Placer v. Corin, supra,* 113 Cal.App.3d at page 447, 170 Cal.Rptr. 232, the court described the discipline imposed by article XIIIB in this way:

> "[A]rticle XIIIB does not limit the ability to expend government funds collected from all sources. Rather, the appropriations limit is based on 'appropriations subject to limitation,' which consists primarily of the authorization to expend during a fiscal year the 'proceeds of taxes.' (§ 8, subd. (a).) As to local governments, limits are placed only on the authorization to expend the proceeds of taxes levied by that entity, in addition to proceeds of state subventions (§ 8, subd. (c)); no limitation is placed on the expenditure of those revenues that do not constitute 'proceeds of taxes.' "[9]

Because of the nature of the financing they receive, tax increment financing, redevelopment agencies are not subject to this type of appropriations limitations or spending caps; they do not expend any "proceeds of taxes." Nor do they raise, through tax increment financing, "*general revenues* for the local entity." (***County*** *of Placer v. Corin, supra,* 113 Cal.App.3d at p. 451, 170 Cal.Rptr. 232, original italics.) The purpose for which state subvention of funds was created, to protect local agencies from having the state transfer its cost of government from itself to the local level, is therefore not brought into play when redevelopment agencies are required to allocate their tax increment financing in a particular manner, as in the operation of sections 33334.2 and 33334.3. (See *City of Sacramento v. State of California, supra,* 50 **Cal.3d** at p. 68, 266 Cal.Rptr. 139, 785 P.2d 522.) The state is not transferring to the Agency the operation and administration of a program for which it was formerly legally and financially ***987** responsible. (***County*** *of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 817, 38 Cal.Rptr.2d 304.)[10]

[8] **[9]** For all these reasons, we conclude the same policies which support exempting tax increment revenues from article XIIIB appropriations limits also support denying reimbursement under section 6 for this particular allocation of those revenues to the Housing Fund. Tax increment financing is not within the scope of article XIIIB. (*Brown v. Community Redevelopment Agency,* ****277** *supra,* 168 Cal.App.3d at pp. 1016–1020, 214 Cal.Rptr. 626.) Section 6 "requires subvention only when the costs in question can be recovered *solely from tax revenues.*" (***County*** *of* ***Fresno*** *v. State of California, supra,* **53 Cal.3d** at p. 487, 280 Cal.Rptr. 92, 808 P.2d 235, original italics.) No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes. Here, these costs of depositing tax

increment revenues in the Housing Fund are attributable not directly to tax revenues, but to the benefit received by the Agency from the tax increment financing scheme, which is one step removed from other local agencies' collection of tax revenues. (§ 33000 et seq.) Therefore, in light of the above authorities, this use of tax increment financing is not a reimbursable "cost" under section 6. We therefore need not interpret any remaining portions of section 6.

DISPOSITION

The judgment is affirmed.

WORK, Acting P.J., and McINTYRE, J., concur.

All Citations

55 Cal.App.4th 976, 64 Cal.Rptr.2d 270, 97 Cal. Daily Op. Serv. 4510, 97 Daily Journal D.A.R. 7464

Footnotes

1 All further statutory references are to the Health and Safety Code unless otherwise noted.

2 " 'Subvention' generally means a grant of financial aid or assistance, or a subsidy. [Citation.]" (*Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1577, 15 Cal.Rptr.2d 547.)

3 In our prior opinion issued in this case, we determined the trial court erred when it denied the California Department of Finance (DOF) leave to intervene as an indispensable party and a real party in interest in the mandamus proceeding. (*Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1194–1199, 51 Cal.Rptr.2d 100.) Thus, DOF is now a respondent on this appeal, as is the Commission (sometimes collectively referred to as respondents). However, our decision in that case was a collateral matter and does not assist us on the merits of this proceeding.

4 Section 6 lists the following exclusions to the requirement for subvention of funds: "(a) Legislative mandates requested by the local agency affected; [¶](b) Legislation defining a new crime or changing an existing definition of a crime; or [¶](c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." In *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 69, 266 Cal.Rptr. 139, 785 P.2d 522, the Supreme Court identified these items as exclusions of otherwise reimbursable programs from the scope of section 6. (See also Gov.Code, § 17514, definition of "costs mandated by the state," using the same "new program or higher level of service" language of section 6.)

5 Section 33071 in the Community Redevelopment Law provides that a fundamental purpose of redevelopment is to expand the supply of low- and moderate-income housing, as well as expanding employment opportunities and improving the social environment.

6 The term of art, "proceeds of taxes," is defined in California Constitution, article XIIIB, section 8, as follows:

(c) " *'Proceeds of taxes' shall include, but not be restricted to, all tax revenues* and the proceeds to an entity of government, from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues. With respect to any local government, 'proceeds of taxes' shall include

subventions received from the state, other than pursuant to Section 6, and, with respect to the state, proceeds of taxes shall exclude such subventions." (Italics added.)

7 The issues before the court in ***County*** *of Placer v. Corin, supra,* 113 Cal.App.3d 443, 170 Cal.Rptr. 232 were whether special assessments and federal grants should be considered proceeds of taxes; the court held they should not. Section 6 is not discussed; the court's analysis of other concepts found in article XIIIB is nevertheless instructive.

8 The alternate grounds of the Commission's decision were that there were no costs subject to reimbursement related to the Housing Fund because there was no net increase in the aggregate program responsibilities of the Agency, and that the set-aside requirement did not constitute a mandated "new program or higher level of service" under this section.

9 The term of art, "appropriations subject to limitation," is defined in the California Constitution, article XIIIB, section 8, as follows: [¶](b) " 'Appropriations subject to limitation' of an entity of local government means any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity* and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes." (Italics added.)

10 We disagree with respondents that the legislative history of sections 33334.2 and 33334.3 is of assistance here, specifically, that section 23 of the bill creating these sections provided that no appropriations were made by the act, nor was any obligation for reimbursements of local agencies created for any costs incurred in carrying out the programs created by the act. (Stats.1976, ch. 1337, § 23.) As stated in *City of San Jose v. State of California, supra,* 45 Cal.App.4th at pages 1817–1818, **53** Cal.Rptr.2d 521, legislative findings regarding mandate are irrelevant to the issue to be decided by the Commission, whether a state mandate exists.

End of Document

54 Cal.3d 326, 814 P.2d 1308, 285 Cal.Rptr. 66
Supreme Court of California

FRANCES KINLAW et al., Plaintiffs and Appellants,
v.
THE STATE OF CALIFORNIA et al., Defendants and Respondents.

No. S014349.
Aug 30, 1991.

SUMMARY

Medically indigent adults and taxpayers brought an action pursuant to Code Civ. Proc., § 526a, against the state, alleging that it had violated Cal. Const., art. XIII B, § 6 (reimbursement of local governments for state-mandated new programs), by shifting its financial responsibility for the funding of health care for the poor onto the county without providing the necessary funding, and that as a result the state had evaded its constitutionally mandated spending limits. The trial court granted summary judgment for the State after concluding plaintiffs lacked standing to prosecute the action. (Superior Court of Alameda County, No. 632120-4, Henry Ramsey, Jr., and Demetrios P. Agretelis, Judges.) The Court of Appeal, First Dist., Div. Two, Nos. A041426 and A043500, reversed.

The Supreme Court reversed the judgment of the Court of Appeal, holding the administrative procedures established by the Legislature (Gov. Code, § 17500 et seq.), which are available only to local agencies and school districts directly affected by a state mandate, were the exclusive means by which the state's obligations under Cal. Const., art. XIII B, § 6, were to be determined and enforced. Accordingly, the court held plaintiffs lacked standing to prosecute the action. (Opinion by Baxter, J., with Lucas, C. J., Panelli, Kennard, and Arabian, JJ., concurring. Separate dissenting opinion by Broussard, J., with Mosk, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1)
State of California § 7--Actions--State-mandated Costs--Reimbursement-- Exclusive Statutory Remedy.
Gov. Code, § 17500 et seq., creates an administrative forum for resolution of state mandate claims arising under Cal. Const., art. XIII B, § 6, and establishes ***327** procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid. It also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (Gov. Code, § 17612). In view of the comprehensive nature of the legislative scheme, and from the expressed intent, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce Cal. Const., art. XIII B, § 6.

(2)
State of California § 7--Actions--State-mandated Costs--Reimbursement-- Private Action to Enforce--Standing.
In an action by medically indigent adults and taxpayers seeking to enforce Cal. Const., art. XIII B, § 6, for declaratory and injunctive relief requiring the state to reimburse the county for the cost of providing health care services to medically indigent adults who, prior to 1983, had been included in the state Medi-Cal program, the Court of Appeal erred in holding that the existence of an administrative remedy (Gov. Code, § 17500 et seq.) by which affected local agencies could enforce their constitutional right under art. XIII B, § 6 to reimbursement for the cost of state mandates di not bar the action. Because the right involved was given by the Constitution to local agencies and school districts, not individuals either as taxpayers or recipients of government benefits and services, the administrative remedy was adequate fully to implement the constitutional provision. The Legislature has the authority to establish procedures for the implementation of local agency rights under art. XIII B, § 6; unless the exercise of a constitutional right is unduly restricted, a court must limit enforcement to the procedures established by the Legislature. Plaintiffs' interest, although pressing, was indirect and did not differ from the interest of the public at large in the financial plight of local government. Relief by way of reinstatement to Medi-Cal pending further

action by the state was not a remedy available under the statute, and thus was not one which a court may award.

[See **Cal.Jur.3d,** State of California, § 78; 7 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 1127 **Witkin,** Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 112.]

COUNSEL

Stephen D. Schear, Stephen E. Ronfeldt, Armando M. Menocal III, Lois Salisbury, Laura Schulkind and Kirk McInnis for Plaintiffs and Appellants. ***328**

Catherine I. Hanson, Astrid G. Meghrigian, Alice P. Mead, Alan K. Marks, County Counsel (San Bernardino), Paul F. Mordy, Deputy County Counsel, De Witt W. Clinton, County Counsel (Los Angeles), Robert M. Fesler, Assistant County Counsel, Frank J. DaVanzo, Deputy County Counsel, Weissburg & Aronson, Mark S. Windisch, Carl Weissburg and Howard W. Cohen as Amici Curiae on behalf of Plaintiffs and Appellants.

John K. Van de Kamp and Daniel E. Lungren, Attorneys General, N. Eugene Hill, Assistant Attorney General, Richard M. Frank, Asher Rubin and Carol Hunter, Deputy Attorneys General, for Defendants and Respondents.

BAXTER, J.

Plaintiffs, medically indigent adults and taxpayers, seek to enforce section 6 of article XIII B (hereafter, section 6) of the California Constitution through an action for declaratory and injunctive relief. They invoked the jurisdiction of the superior court as taxpayers pursuant to Code of Civil Procedure section 526a and as persons affected by the alleged failure of the state to comply with section 6. The superior court granted summary judgment for defendants State of California and Director of the Department of Health Services, after concluding that plaintiffs lacked standing to prosecute the action. On appeal, the Court of Appeal held that plaintiffs have standing and that the action is not barred by the availability of administrative remedies.

We reverse. The administrative procedures established by the Legislature, which are available only to local agencies and school districts directly affected by a state mandate, are the exclusive means by which the state's obligations under section 6 are to be determined and enforced. Plaintiffs therefore lack standing.

I State Mandates

Section 6, adopted on November 6, 1979, as part of an initiative measure imposing spending limits on state and local government, also imposes on the state an obligation to reimburse local agencies for the cost of most programs and services which they must provide pursuant to a state mandate if the local agencies were not under a preexisting duty to fund the activity. It provides: ***329**

"Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

"(a) Legislative mandates requested by the local agency affected;

"(b) Legislation defining a new crime or changing an existing definition of a crime; or

"(c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

A complementary provision, section 3 of article XIII B, provides for a shift from the state to the local agency of a portion of the spending or "appropriation" limit of the state when responsibility for funding an activity is shifted to a local agency:

"The appropriations limit for any fiscal year ... shall be adjusted as follows: [¶] (a) In the event that the financial responsibility of providing services is transferred, in whole or in part, ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriations limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount."

II Plaintiffs' Action

The underlying issue in this action is whether the state is obligated to reimburse the County of Alameda, and shift to Alameda County a concomitant portion of the state's spending limit, for the cost of providing health care services

to medically indigent adults who prior to 1983 had been included in the state Medi-Cal program. Assembly Bill No. 799 (1981-1982 Reg. Sess.) (AB 799) (Stats. 1982, ch. 328, p. 1568) removed medically indigent adults from Medi-Cal effective January 1, 1983. At the time section 6 was adopted, the state was funding Medi-Cal coverage for these persons without requiring any county financial contribution.

Plaintiffs initiated this action in the Alameda County Superior Court. They sought relief on their own behalf and on behalf of a class of similarly ***330** situated medically indigent adult residents of Alameda County. The only named defendants were the State of California, the Director of the Department of Health Services, and the County of Alameda.

In the complaint for declaratory and injunctive relief, plaintiffs sought an injunction compelling the state to restore Medi-Cal eligibility to medically indigent adults or to reimburse the County of Alameda for the cost of providing health care to those persons. They also prayed for a declaration that the transfer of responsibility from the state-financed Medi- Cal program to the counties without adequate reimbursement violated the California Constitution. [1]

At the time plaintiffs initiated their action neither Alameda County, nor any other county or local agency, had filed a reimbursement claim with the Commission on State Mandates (Commission). [2]

Whether viewed as an action seeking restoration of Medi-Cal benefits, one to compel state reimbursement of county costs, or one for declaratory relief, therefore, the action required a determination that the enactment of AB 799 created a state mandate within the contemplation of section 6. Only upon resolution of that issue favorably to plaintiffs would the state have an obligation to reimburse the county for its increased expense and shift a portion of its appropriation limit, or to reinstate Medi-Cal benefits for plaintiffs and the class they seek to represent.

The gravamen of the action is, therefore, enforcement of section 6. [3] ***331**

III Enforcement of Article XIII B, Section 6

In 1984, almost five years after the adoption of article XIII B, the Legislature enacted comprehensive administrative procedures for resolution of claims arising out of section 6. (§ 17500.) The Legislature did so because the absence of a uniform procedure had resulted in inconsistent rulings on the existence of state mandates, unnecessary litigation, reimbursement delays, and, apparently, resultant uncertainties in accommodating reimbursement requirements in the budgetary process. The necessity for the legislation was explained in section 17500:

"The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state- mandated local programs has not provided for the effective determination of the state's responsibilities under Section 6 of Article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary and, therefore, in order to relieve unnecessary congestion of the judicial system, *it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs.*" (Italics added.)

In part 7 of division 4 of title 2 of the Government Code, "State-Mandated Costs," which commences with section 17500, the Legislature created the Commission (§ 17525), to adjudicate disputes over the existence of a state-mandated program (§§ 17551, 17557) and to adopt procedures for submission and adjudication of reimbursement claims (§ 17553). The five-member Commission includes the Controller, the Treasurer, the Director of Finance, the Director of the Office of Planning and Research, and a public member experienced in public finance. (§ 17525.)

The legislation establishes a test-claim procedure to expeditiously resolve disputes affecting multiple agencies (§ 17554), [4] establishes the method of ***332** payment of claims (§§ 17558, 17561), and creates reporting procedures which enable the Legislature to budget adequate funds to meet the expense of state mandates (§§ 17562, 17600, 17612, subd. (a).)

Pursuant to procedures which the Commission was authorized to establish (§ 17553), local agencies [5] and school districts [6] are to file claims for reimbursement of state-mandated costs with the Commission (§§ 17551, 17560), and reimbursement is to be provided only through this statutory procedure. (§§ 17550, 17552.)

The first reimbursement claim filed which alleges that a state mandate has been created under a statute or executive order is treated as a "test claim." (§ 17521.) A public hearing must be held promptly on any test claim. At the hearing on a test claim or on any other reimbursement claim, evidence may be presented not only by the claimant, but also by the Department of Finance and any other department or agency potentially affected by the claim. (§ 17553.) Any interested organization or individual may participate in the hearing. (§ 17555.)

A local agency filing a test claim need not first expend sums to comply with the alleged state mandate, but may base its claim on estimated costs. (§ 17555.) The Commission must determine both whether a state mandate exists and, if so, the amount to be reimbursed to local agencies and school districts, adopting "parameters and guidelines" for reimbursement of any claims relating to that statute or executive order. (§ 17557.) Procedures for determining whether local agencies have achieved statutorily authorized cost savings and for offsetting these savings against reimbursements are also provided. (§ 17620 et seq.) Finally, judicial review of the Commission decision is available through petition for writ of mandate filed pursuant to Code of Civil Procedure section 1094.5. (§ 17559.)

The legislative scheme is not limited to establishing the claims procedure, however. It also contemplates reporting to the Legislature and to departments and agencies of the state which have responsibilities related to funding state mandates, budget planning, and payment. The parameters and guidelines adopted by the Commission must be submitted to the Controller, who is to pay subsequent claims arising out of the mandate. (§ 17558.) Executive orders mandating costs are to be accompanied by an appropriations ***333** bill to cover the costs if the costs are not included in the budget bill, and in subsequent years the costs must be included in the budget bill. (§ 17561, subds. (a) & (b).) Regular review of the costs is to be made by the Legislative Analyst, who must report to the Legislature and recommend whether the mandate should be continued. (§ 17562.) The Commission is also required to make semiannual reports to the Legislature of the number of mandates found and the estimated reimbursement cost to the state. (§ 17600.) The Legislature must then adopt a "local government claims bill." If that bill does not include funding for a state mandate, an affected local agency or school district may seek a declaration from the superior court for the County of Sacramento that the mandate is unenforceable, and an injunction against enforcement. (§ 17612.)

Additional procedures, enacted in 1985, create a system of state-mandate apportionments to fund reimbursement. (§ 17615 et seq.)

(1) It is apparent from the comprehensive nature of this legislative scheme, and from the Legislature's expressed intent, that the exclusive remedy for a claimed violation of section 6 lies in these procedures. The statutes create an administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created. The statutory scheme also designates the Sacramento County Superior Court as the venue for judicial actions to declare unfunded mandates invalid (§ 17612).

The legislative intent is clearly stated in section 17500: "It is the intent of the Legislature in enacting this part to provide for the implementation of Section 6 of Article XIII B of the California Constitution and to consolidate the procedures for reimbursement of statutes specified in the Revenue and Taxation Code with those identified in the Constitution. ..." And section 17550 states: "Reimbursement of local agencies and school districts for costs mandated by the state shall be provided pursuant to this chapter."

Finally, section 17552 provides: "This chapter shall provide *the sole and exclusive procedure* by which a local agency or school district may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." (Italics added.)

In short, the Legislature has created what is clearly intended to be a comprehensive and exclusive procedure by which to implement and enforce section 6. ***334**

IV Exclusivity

(2) Plaintiffs argued, and the Court of Appeal agreed, that the existence of an administrative remedy by which affected local agencies could enforce their right under section 6 to reimbursement for the cost of state mandates did not bar this action because the administrative remedy is available only to local agencies and school districts.

The Court of Appeal recognized that the decision of the County of Alameda, which had not filed a claim for reimbursement at the time the complaint was filed, was a discretionary decision which plaintiffs could not challenge.

(*Dunn v. Long Beach L. & W. Co.* (1896) 114 Cal. 605, 609, 610-611 [46 P. 607]; *Silver v. Watson* (1972) 26 Cal.App.3d 905, 909 [103 Cal.Rptr. 576]; *Whitson v. City of Long Beach* (1962) 200 Cal.App.2d 486, 506 [19 Cal.Rptr. 668]; *Elliott v. Superior Court* (1960) 180 Cal.App.2d 894, 897 [5 Cal.Rptr. 116].) The court concluded, however, that public policy and practical necessity required that plaintiffs have a remedy for enforcement of section 6 independent of the statutory procedure.

The right involved, however, is a right given by the Constitution to local agencies, not individuals either as taxpayers or recipients of government benefits and services. Section 6 provides that the "state shall provide a subvention of funds *to reimburse ... local governments* ...." (Italics added.) The administrative remedy created by the Legislature is adequate to fully implement section 6. That Alameda County did not file a reimbursement claim does not establish that the enforcement remedy is inadequate. Any of the 58 counties was free to file a claim, and other counties did so. The test claim is now before the Court of Appeal. The administrative procedure has operated as intended.

The Legislature has the authority to establish procedures for the implementation of local agency rights under section 6. Unless the exercise of a constitutional right is unduly restricted, the court must limit enforcement to the procedures established by the Legislature. (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723]; *Chesney v. Byram* (1940) 15 Cal.2d 460, 463 [101 P.2d 1106]; *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 75 [222 Cal.Rptr. 750].)

Plaintiffs' argument that they must be permitted to enforce section 6 as individuals because their right to adequate health care services has been compromised by the failure of the state to reimburse the county for the cost ***335** of services to medically indigent adults is unpersuasive. Plaintiffs' interest, although pressing, is indirect and does not differ from the interest of the public at large in the financial plight of local government. Although the basis for the claim that the state must reimburse the county for its costs of providing the care that was formerly available to plaintiffs under Medi-Cal is that AB 799 created a state mandate, plaintiffs have no right to have any reimbursement expended for health care services of any kind. Nothing in article XIII B or other provision of law controls the county's expenditure of the funds plaintiffs claim must be paid to the county. To the contrary, section 17563 gives the local agency complete discretion in the expenditure of funds received pursuant to section 6, providing: "Any funds received by a local agency or school district pursuant to the provisions of this chapter may be used for any public purpose."

The relief plaintiffs seek in their prayer for state reimbursement of county expenses is, in the end, a reallocation of general revenues between the state and the county. Neither public policy nor practical necessity compels creation of a judicial remedy by which individuals may enforce the right of the county to such revenues. The Legislature has established a procedure by which the county may claim any revenues to which it believes it is entitled under section 6. That test-claim statute expressly provides that not only the claimant, but also "any other interested organization or individual may participate" in the hearing before the Commission (§ 17555) at which the right to reimbursement of the costs of such mandate is to be determined. Procedures for receiving any claims must "provide for presentation of evidence by the claimant, the Department of Finance and any other affected department or agency, *and any other interested person.*" (§ 17553. Italics added.) Neither the county nor an interested individual is without an opportunity to be heard on these questions. These procedures are both adequate and exclusive. [7]

The alternative relief plaintiffs seek—reinstatement to Medi-Cal pending further action by the state—is not a remedy available under the statute, and thus is not one which this court may award. The remedy for the failure to fund a program is a declaration that the mandate is unenforceable. That relief is available only after the Commission has determined that a mandate exists ***336** and the Legislature has failed to include the cost in a local government claims bill, and only on petition by the county. (§ 17612.) [8]

Moreover, the judicial remedy approved by the Court of Appeal permits resolution of the issues raised in a state mandate claim without the participation of those officers and individuals the Legislature deems necessary to a full and fair exposition and resolution of the issues. Neither the Controller nor the Director of Finance was named a defendant in this action. The Treasurer and the Director of the Office of Planning and Research did not participate. All of these officers would have been involved in determining the

question as members of the Commission, as would the public member of the Commission. The judicial procedures were not equivalent to the public hearing required on test claims before the Commission by section 17555. Therefore, other affected departments, organizations, and individuals had no opportunity to be heard. [9]

Finally, since a determination that a state mandate has been created in a judicial proceeding rather than one before the Commission does not trigger the procedures for creating parameters and guidelines for payment of claims, or for inclusion of estimated costs in the state budget, there is no source of funds available for compliance with the judicial decision other than the appropriations for the Department of Health Services. Payment from those funds can only be at the expense of another program which the department is obligated to fund. No public policy supports, let alone requires, this result.

The superior court acted properly in dismissing this action.

The judgment of the Court of Appeal is reversed.

Lucas, C. J., Panelli, J., Kennard, J., and Arabian, J., concurred.

BROUSSARD, J.

I dissent. For nine years the Legislature has defied the mandate of article XIII B of the California Constitution (hereafter article XIII B). Having transferred responsibility for the care of medically indigent adults (MIA's) to county governments, the Legislature has failed to provide the counties with sufficient money to meet this responsibility, yet the ***337** Legislature computes its own appropriations limit as if it fully funded the program. The majority, however, declines to remedy this violation because, it says, the persons most directly harmed by the violation—the medically indigent who are denied adequate health care—have no standing to raise the matter. I disagree, and will demonstrate that (1) plaintiffs have standing as citizens to seek a declaratory judgment to determine whether the state is complying with its constitutional duty under article XIII B; (2) the creation of an administrative remedy whereby counties and local districts can enforce article XIII B does not deprive the citizenry of its own independent right to enforce that provision; and (3) even if plaintiffs lacked standing, our recent decision in *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063] permits us to reach and resolve any significant issue decided by the Court of Appeal and fully briefed and argued here. I conclude that we should reach the merits of the appeal.

On the merits, I conclude that the state has not complied with its constitutional obligation under article XIII B. To prevent the state from avoiding the spending limits imposed by article XIII B, section 6 of that article prohibits the state from transferring previously state-financed programs to local governments without providing sufficient funds to meet those burdens. In 1982, however, the state excluded the medically indigent from its Medi-Cal program, thus shifting the responsibility for such care to the counties. Subvention funds provided by the state were inadequate to reimburse the counties for this responsibility, and became less adequate every year. At the same time, the state continued to compute its spending limit as if it fully financed the entire program. The result is exactly what article XIII B was intended to prevent: the state enjoys a falsely inflated spending limit; the county is compelled to assume a burden it cannot afford; and the medically indigent receive inadequate health care.

I. Facts and Procedural History

Plaintiffs—citizens, taxpayers, and persons in need of medical care—allege that the state has shifted its financial responsibility for the funding of health care for MIA's to the counties without providing the necessary funding and without any agreement transferring appropriation limits, and that as a result the state is violating article XIII B. Plaintiffs further allege they and the class they claim to represent cannot, consequently, obtain adequate health care from the County of Alameda, which lacks the state funding to provide it. The county, although nominally a defendant, aligned ***338** itself with plaintiffs. It admits the inadequacy of its program to provide medical care for MIA's but blames the absence of state subvention funds. [1]

At hearings below, plaintiffs presented uncontradicted evidence regarding the enormous impact of these statutory changes upon the finances and population of Alameda County. That county now spends about $40 million annually on health care for MIA's, of which the state reimburses about half. Thus, since article XIII B became effective, Alameda County's obligation for the health care of MIA's has risen from zero to more than $20 million per year. The county has inadequate funds to discharge its new obligation

for the health care of MIA's; as a result, according to the Court of Appeal, uncontested evidence from medical experts presented below shows that, "The delivery of health care to the indigent in Alameda County is in a state of shambles; the crisis cannot be overstated ...." "Because of inadequate state funding, some Alameda County residents are dying, and many others are suffering serious diseases and disabilities, because they cannot obtain adequate access to the medical care they need ...." "The system is clogged to the breaking point. ... All community clinics ... are turning away patients." "The funding received by the county from the state for MIAs does not approach the actual cost of providing health care to the MIAs. As a consequence, inadequate resources available to county health services jeopardize the lives and health of thousands of people ...."

The trial court acknowledged that plaintiffs had shown irreparable injury, but denied their request for a preliminary injunction on the ground that they could not prevail in the action. It then granted the state's motion for summary judgment. Plaintiffs appealed from both decisions of the trial court.

The Court of Appeal consolidated the two appeals and reversed the rulings below. It concluded that plaintiffs had standing to bring this action to enforce the constitutional spending limit of article XIII B, and that the action is not barred by the existence of administrative remedies available to counties. It then held that the shift of a portion of the cost of medical indigent care by the state to Alameda County constituted a state-mandated new program under the provisions of article XIII B, which triggered that article's provisions requiring a subvention of funds by the state to reimburse Alameda ***339** County for the costs of such program it was required to assume. The judgments denying a preliminary injunction and granting summary judgment for defendants were reversed. We granted review.

II. Standing

A. *Plaintiffs have standing to bring an action for declaratory relief to determine whether the state is complying with article XIII B.*

Plaintiffs first claim standing as taxpayers under Code of Civil Procedure section 526a, which provides that: "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a county ..., may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. ..." As in *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439 [261 Cal.Rptr. 574, 777 P.2d 610], however, it is "unnecessary to reach the question whether plaintiffs have standing to seek an injunction under Code of Civil Procedure section 526a, because there is an independent basis for permitting them to proceed." Plaintiffs here seek a declaratory judgment that the transfer of responsibility for MIA's from the state to the counties without adequate reimbursement violates article XIII B. A declaratory judgment that the state has breached its duty is essentially equivalent to an action in mandate to compel the state to perform its duty. (See *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 9 [270 Cal.Rptr. 796, 793 P.2d 2], which said that a declaratory judgment establishing that the state has a duty to act provides relief equivalent to mandamus, and makes issuance of the writ unnecessary.) Plaintiffs further seek a mandatory injunction requiring that the state pay the health costs of MIA's under the Medi-Cal program until the state meets its obligations under article XIII B. The majority similarly characterize plaintiffs' action as one comparable to mandamus brought to enforce section 6 of article XIII B.

We should therefore look for guidance to cases that discuss the standing of a party seeking a writ of mandate to compel a public official to perform his or her duty.[2] Such an action may be brought by any person "beneficially interested" in the issuance of the writ. (Code Civ. Proc., § 1086.) In *Carsten* ***340** *v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796 [166 Cal.Rptr. 844, 614 P.2d 276], we explained that the "requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." We quoted from Professor Davis, who said, "One who is in fact adversely affected by governmental action should have standing to challenge that action if it is judicially reviewable." (Pp. 796-797, quoting 3 Davis, Administrative Law Treatise (1958) p. 291.) Cases applying this standard include *Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520

[170 Cal.Rptr. 724], which held that low- income residents of Los Angeles had standing to challenge exclusionary zoning laws of suburban communities which prevented the plaintiffs from moving there; *Taschner v. City Council, supra,* 31 Cal.App.3d 48, which held that a property owner has standing to challenge an ordinance which may limit development of the owner's property; and *Felt v. Waughop* (1924) 193 Cal. 498 [225 P. 862], which held that a city voter has standing to compel the city clerk to certify a correct list of candidates for municipal office. Other cases illustrate the limitation on standing: *Carsten v. Psychology Examining Com., supra,* 27 Cal.3d 793, held that a member of the committee who was neither seeking a license nor in danger of losing one had no standing to challenge a change in the method of computing the passing score on the licensing examination; *Parker v. Bowron* (1953) 40 Cal.2d 344 [254 P.2d 6] held that a union official who was neither a city employee nor a city resident had no standing to compel a city to follow a prevailing wage ordinance; and *Dunbar v. Governing Board* (1969) 275 Cal.App.2d 14 [79 Cal.Rptr. 662] held that a member of a student organization had standing to challenge a college district's rule barring a speaker from campus, but persons who merely planned to hear him speak did not.

No one questions that plaintiffs are affected by the lack of funds to provide care for MIA's. Plaintiffs, except for plaintiff Rabinowitz, are not merely citizens and taxpayers; they are medically indigent persons living in Alameda County who have been and will be deprived of proper medical care if funding of MIA programs is inadequate. Like the other plaintiffs here, ***341** plaintiff Kinlaw, a 60-year-old woman with diabetes and hypertension, has no health insurance. Plaintiff Spier has a chronic back condition; inadequate funding has prevented him from obtaining necessary diagnostic procedures and physiotherapy. Plaintiff Tsosie requires medication for allergies and arthritis, and claims that because of inadequate funding she cannot obtain proper treatment. Plaintiff King, an epileptic, says she was unable to obtain medication from county clinics, suffered seizures, and had to go to a hospital. Plaintiff "Doe" asserts that when he tried to obtain treatment for AIDS-related symptoms, he had to wait four to five hours for an appointment and each time was seen by a different doctor. All of these are people personally dependent upon the quality of care of Alameda County's MIA program; most have experienced inadequate care because the program was underfunded, and all can anticipate future deficiencies in care if the state continues its refusal to fund the program fully.

The majority, however, argues that the county has no duty to use additional subvention funds for the care of MIA's because under Government Code section 17563 "[a]ny funds received by a local agency ... pursuant to the provisions of this chapter may be used for any public purpose." Since the county may use the funds for other purposes, it concludes that MIA's have no special interest in the subvention. [3]

This argument would be sound if the county were already meeting its obligations to MIA's under Welfare and Institutions Code section 17000. If that were the case, the county could use the subvention funds as it chose, and plaintiffs would have no more interest in the matter than any other county resident or taxpayer. But such is not the case at bar. Plaintiffs here allege that the county is not complying with its duty, mandated by Welfare and Institutions Code section 17000, to provide health care for the medically indigent; the county admits its failure but pleads lack of funds. Once the county receives adequate funds, it must perform its statutory duty under section 17000 of the Welfare and Institutions Code. If it refused, an action in mandamus would lie to compel performance. (See *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].) In fact, the county has made clear throughout this litigation that it would use the subvention funds to provide care for MIA's. The majority's conclusion that plaintiffs lack a special, beneficial interest in the state's compliance with article XIII B ignores the practical realities of health care funding.

Moreover, we have recognized an exception to the rule that a plaintiff must be beneficially interested. "Where the question is one of public right ***342** and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." (*Bd. of Soc. Welfare v. County of L. A.* (1945) 27 Cal.2d 98, 100-101 [162 P.2d 627].) We explained in *Green v. Obledo* (1981) 29 Cal.3d 126, 144 [172 Cal.Rptr. 206, 624 P.2d 256], that this "exception promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. ... It has often been invoked by California courts. [Citations.]"

Green v. Obledo presents a close analogy to the present case. Plaintiffs there filed suit to challenge whether a state welfare regulation limiting deductibility of work-related expenses in determining eligibility for aid to families with dependent children (AFDC) assistance complied with federal requirements. Defendants claimed that plaintiffs were personally affected only by a portion of the regulation, and had no standing to challenge the balance of the regulation. We replied that "[t]here can be no question that the proper calculation of AFDC benefits is a matter of public right [citation], and plaintiffs herein are certainly citizens seeking to procure the enforcement of a public duty. [Citation.] It follows that plaintiffs have standing to seek a writ of mandate commanding defendants to cease enforcing [the regulation] in its entirety." (29 Cal.3d at p. 145.)

We again invoked the exception to the requirement for a beneficial interest in *Common Cause v. Board of Supervisors, supra,* 49 Cal.3d 432. Plaintiffs in that case sought to compel the county to deputize employees to register voters. We quoted *Green v. Obledo, supra,* 29 Cal.3d 126, 144, and concluded that "[t]he question in this case involves a public right to voter outreach programs, and plaintiffs have standing as citizens to seek its vindication." (49 Cal.3d at p. 439.) We should reach the same conclusion here.

B. *Government Code sections 17500-17630 do not create an exclusive remedy which bars citizen-plaintiffs from enforcing article XIII B.*

Four years after the enactment of article XIII B, the Legislature enacted Government Code sections 17500 through 17630 to implement article XIII B, section 6. These statutes create a quasi-judicial body called the Commission on State Mandates, consisting of the state Controller, state Treasurer, state Director of Finance, state Director of the Office of Planning and Research, and one public member. The commission has authority to "hear and decide upon [any] claim" by a local government that it "is entitled to be reimbursed by the state" for costs under article XIII B. (***343** Gov. Code, § 17551, subd. (a).) Its decisions are subject to review by an action for administrative mandamus in the superior court. (See Gov. Code, § 17559.)

The majority maintains that a proceeding before the Commission on State Mandates is the exclusive means for enforcement of article XIII B, and since that remedy is expressly limited to claims by local agencies or school districts (Gov. Code, § 17552), plaintiffs lack standing to enforce the constitutional provision.[4] I disagree, for two reasons.

First, Government Code section 17552 expressly addressed the question of exclusivity of remedy, and provided that "[t]his chapter shall provide the sole and exclusive procedure by which *a local agency or school district* may claim reimbursement for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." (Italics added.) The Legislature was aware that local agencies and school districts were not the only parties concerned with state mandates, for in Government Code section 17555 it provided that "any other interested organization or individual may participate" in the commission hearing. Under these circumstances the Legislature's choice of words—"the sole and exclusive procedure by which a local agency or school district may claim reimbursement"—limits the procedural rights of those claimants only, and does not affect rights of other persons. *Expressio unius est exclusio alterius*—"the expression of certain things in a statute necessarily involves exclusion of other things not expressed." (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403 [135 Cal.Rptr. 266].)

The case is similar in this respect to *Common Cause v. Board of Supervisors, supra,* 49 Cal.3d 432. Here defendants contend that the counties' right of action under Government Code sections 17551-17552 impliedly excludes ***344** any citizen's remedy; in *Common Cause* defendants claimed the Attorney General's right of action under Elections Code section 304 impliedly excluded any citizen's remedy. We replied that "the plain language of section 304 contains no limitation on the right of private citizens to sue to enforce the section. To infer such a limitation would contradict our long-standing approval of citizen actions to require governmental officials to follow the law, expressed in our expansive interpretation of taxpayer standing [citations], and our recognition of a 'public interest' exception to the requirement that a petitioner for writ of mandate have a personal beneficial interest in the proceedings [citations]." (49 Cal.3d at p. 440, fn. omitted.) Likewise in this case the plain language of Government Code sections 17551-17552 contain no limitation on the right of private citizens, and to infer such a right would contradict our long-standing approval of citizen actions to enforce public duties.

The United States Supreme Court reached a similar conclusion in *Rosado v. Wyman* (1970) 397 U.S. 397 [25 L.Ed.2d 442, 90 S.Ct. 1207]. In that case New York welfare recipients sought a ruling that New York had violated federal law by failing to make cost-of-living adjustments to welfare grants. The state replied that the statute giving the Department of Health, Education and Welfare authority to cut off federal funds to noncomplying states constituted an exclusive remedy. The court rejected the contention, saying that "[w]e are most reluctant to assume Congress has closed the avenue of effective judicial review to those individuals most directly affected by the administration of its program." (P. 420 [25 L.Ed.2d at p. 460].) The principle is clear: the persons actually harmed by illegal state action, not only some administrator who has no personal stake in the matter, should have standing to challenge that action.

Second, article XIII B was enacted to protect taxpayers, not governments. Sections 1 and 2 of article XIII B establish strict limits on state and local expenditures, and require the refund of all taxes collected in excess of those limits. Section 6 of article XIII B prevents the state from evading those limits and burdening county taxpayers by transferring financial responsibility for a program to a county, yet counting the cost of that program toward the limit on state expenditures.

These provisions demonstrate a profound distrust of government and a disdain for excessive government spending. An exclusive remedy under which only governments can enforce article XIII B, and the taxpayer-citizen can appear only if a government has first instituted proceedings, is inconsistent with the ethos that led to article XIII B. The drafters of article XIII B and the voters who enacted it would not accept that the state Legislature—the principal body regulated by the article—could establish a procedure ***345** under which the only way the article can be enforced is for local governmental bodies to initiate proceedings before a commission composed largely of state financial officials.

One obvious reason is that in the never-ending attempts of state and local government to obtain a larger proportionate share of available tax revenues, the state has the power to coerce local governments into foregoing their rights to enforce article XIII B. An example is the Brown-Presley Trial Court Funding Act (Gov. Code, § 77000 et seq.), which provides that the county's acceptance of funds for court financing may, in the discretion of the Governor, be deemed a waiver of the counties' rights to proceed before the commission on all claims for reimbursement for state-mandated local programs which existed and were not filed prior to passage of the trial funding legislation.[5] The ability of state government by financial threat or inducement to persuade counties to waive their right of action before the commission renders the counties' right of action inadequate to protect the public interest in the enforcement of article XIII B.

The facts of the present litigation also demonstrate the inadequacy of the commission remedy. The state began transferring financial responsibility for MIA's to the counties in 1982. Six years later no county had brought a proceeding before the commission. After the present suit was filed, two counties filed claims for 70 percent reimbursement. Now, nine years after the 1982 legislation, the counties' claims are pending before the Court of Appeal. After that court acts, and we decide whether to review its decision, the matter may still have to go back to the commission for hearings to ***346** determine the amount of the mandate—which is itself an appealable order. When an issue involves the life and health of thousands, a procedure which permits this kind of delay is not an adequate remedy.

In sum, effective, efficient enforcement of article XIII B requires that standing to enforce that measure be given to those harmed by its violation—in this case, the medically indigent—and not be vested exclusively in local officials who have no personal interest at stake and are subject to financial and political pressure to overlook violations.

C. *Even if plaintiffs lack standing this court should nevertheless address and resolve the merits of the appeal.*

Although ordinarily a court will not decide the merits of a controversy if the plaintiffs lack standing (see *McKinny v. Board of Trustees* (1982) 31 Cal.3d 79, 90 [181 Cal.Rptr. 549, 642 P.2d 460]), we recognized an exception to this rule in our recent decision in *Dix v. Superior Court, supra,* 53 Cal.3d 442 (hereafter *Dix*). In *Dix,* the victim of a crime sought to challenge the trial court's decision to recall a sentence under Penal Code section 1170. We held that only the prosecutor, not the victim of the crime, had standing to raise that issue. We nevertheless went on to consider and decide questions raised by the victim concerning the trial court's authority to recall a sentence under Penal Code section 1170, subdivision (d). We explained that the

sentencing issues "are significant. The case is fully briefed and all parties apparently seek a decision on the merits. Under such circumstances, we deem it appropriate to address [the victim's] sentencing arguments for the guidance of the lower courts. Our discretion to do so under analogous circumstances is well settled. [Citing cases explaining when an appellate court can decide an issue despite mootness.]" (53 Cal.3d at p. 454.) In footnote we added that "Under article VI, section 12, subdivision (b) of the California Constitution ..., we have jurisdiction to 'review the *decision of a Court of Appeal* in any cause.' (Italics added.) Here the Court of Appeal's decision addressed two issues—standing and merits. Nothing in article VI, section 12(b) suggests that, having rejected the Court of Appeal's conclusion on the preliminary issue of standing, we are foreclosed from 'review [ing]' the second subject addressed and resolved in its decision." (Pp. 454-455, fn. 8.)

I see no grounds on which to distinguish *Dix.* The present case is also one in which the Court of Appeal decision addressed both standing and merits. It is fully briefed. Plaintiffs and the county seek a decision on the merits. While the state does not seek a decision on the merits in this proceeding, its appeal of the superior court decision in the mandamus proceeding brought by the County of Los Angeles (see maj. opn., *ante,* p. 330, fn. 2*ante,* p. 330, fn. 2) shows that it is not opposed to an appellate decision on the merits. ***347**

The majority, however, notes that various state officials—the Controller, the Director of Finance, the Treasurer, and the Director of the Office of Planning and Research—did not participate in this litigation. Then in a footnote, the majority suggests that this is the reason they do not follow the *Dix* decision. (Maj. opn., *ante,* p. 336, fn. 9*ante,* p. 336, fn. 9.) In my view, this explanation is insufficient. The present action is one for declaratory relief against the state. It is not necessary that plaintiffs also sue particular state officials. (The state has never claimed that such officials were necessary parties.) I do not believe we should refuse to reach the merits of this appeal because of the nonparticipation of persons who, if they sought to participate, would be here merely as amici curiae. [6]

The case before us raises no issues of departmental policy. It presents solely an issue of law which this court is competent to decide on the briefs and arguments presented. That issue is one of great significance, far more significant than any raised in *Dix.* Judges rarely recall sentencing under Penal Code section 1170, subdivision (d); when they do, it generally affects only the individual defendant. In contrast, the legal issue here involves immense sums of money and affect budgetary planning for both the state and counties. State and county governments need to know, as soon as possible, what their rights and obligations are; legislators considering proposals to deal with the current state and county budget crisis need to know how to frame legislation so it does not violate article XIII B. The practical impact of a decision on the people of this state is also of great importance. The failure of the state to provide full subvention funds and the difficulty of the county in filling the gap translate into inadequate staffing and facilities for treatment of thousands of persons. Until the constitutional issues are resolved the legal uncertainties may inhibit both levels of government from taking the steps needed to address this problem. A delay of several years until the Los Angeles case is resolved could result in pain, hardship, or even death for many people. I conclude that, whether or not plaintiffs have standing, this court should address and resolve the merits of the appeal.

D. *Conclusion as to standing.*

As I have just explained, it is not necessary for plaintiffs to have standing for us to be able to decide the merits of the appeal. Nevertheless, I conclude ***348** that plaintiffs have standing both as persons "beneficially interested" under Code of Civil Procedure section 1086 and under the doctrine of *Green v. Obledo, supra,* 29 Cal.3d 126, to bring an action to determine whether the state has violated its duties under article XIII B. The remedy given local agencies and school districts by Government Code sections 17500- 17630 is, as Government Code section 17552 states, the exclusive remedy by which those bodies can challenge the state's refusal to provide subvention funds, but the statute does not limit the remedies available to individual citizens.

III. Merits of the Appeal

A. *State funding of care for MIA's.*

Welfare and Institutions Code section 17000 requires every county to "relieve and support" all indigent or incapacitated residents, except to the extent that such persons are supported or relieved by other sources. [7] From 1971 until 1982, and thus at the time article XIII B became effective, counties were not required to pay for the provision of health services to MIA's, whose health needs were met through the state-funded Medi-Cal program. Since the medical needs of MIA's were fully met through other sources, the counties had no duty under Welfare and Institutions Code section 17000 to meet those

needs. While the counties did make general contributions to the Medi-Cal program (which covered persons other than MIA's) from 1971 until 1978, at the time article XIII B became effective in 1980 the counties were not required to make any financial contributions to Medi-Cal. It is therefore undisputed that the counties were not required to provide financially for the health needs of MIA's when article XIII B became effective. The state funded all such needs of MIA's.

In 1982, the Legislature passed Assembly Bill No. 799 (1981-1982 Reg. Sess.; Stats. 1982, ch. 328, pp. 1568-1609) (hereafter AB No. 799), which removed MIA's from the state-funded Medi-Cal program as of January 1, 1983, and thereby transferred to the counties, through the County Medical Services Plan which AB No. 799 created, the financial responsibility to provide health services to approximately 270,000 MIA's. AB No. 799 required that the counties provide health care for MIA's, yet appropriated only 70 percent of what the state would have spent on MIA's had those persons remained a state responsibility under the Medi-Cal program.

Since 1983, the state has only partially defrayed the costs to the counties of providing health care to MIA's. Such state funding to counties was ***349** initially relatively constant, generally more than $400 million per year. By 1990, however, state funding had decreased to less than $250 million. The state, however, has always included the full amount of its former obligation to provide for MIA's under the Medi-Cal program in the year preceding July 1, 1980, as part of its article XIII B "appropriations limit," i.e., as part of the base amount of appropriations on which subsequent annual adjustments for cost-of-living and population changes would be calculated. About $1 billion has been added to the state's adjusted spending limit for population growth and inflation *solely* because of the state's inclusion of all MIA expenditures in the appropriation limit established for its base year, 1979-1980. The state has not made proportional increases in the sums provided to counties to pay for the MIA services funded by the counties since January 1, 1983.

B. *The function of article XIII B.*

Our recent decision in *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487 [280 Cal.Rptr. 92, 808 P.2d 235] (hereafter *County of Fresno*), explained the function of article XIII B and its relationship to article XIII A, enacted one year earlier:

"At the June 6, 1978, Primary Election, article XIII A was added to the Constitution through the adoption of Proposition 13, an initiative measure aimed at controlling ad valorem property taxes and the imposition of new 'special taxes.' (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 231-232 [149 Cal.Rptr. 239, 583 P.2d 1281].) The constitutional provision imposes a limit on the power of state and local governments to adopt and levy taxes. (*City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522] (*City of Sacramento*).)

"At the November 6, 1979, Special Statewide Election, article XIII B was added to the Constitution through the adoption of Proposition 4, another initiative measure. That measure places limitations on the ability of both state and local governments to appropriate funds for expenditures.

" 'Articles XIII A and XIII B work in tandem, together restricting California governments' power both to levy and to spend [taxes] for public purposes.' (*City of Sacramento, supra,* 50 Cal.3d at p. 59, fn. 1.)

"Article XIII B of the Constitution was intended ... to provide 'permanent protection for taxpayers from excessive taxation' and 'a reasonable way to provide discipline in tax spending at state and local levels.' (See *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232], quoting and following Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979), argument ***350** in favor of Prop. 4, p. 18.) To this end, it establishes an 'appropriations limit' for both state and local governments (Cal. Const., art. XIII B, § 8, subd. (h)) and allows no 'appropriations subject to limitation' in excess thereof (*id.,* § 2). [8] (See *County of Placer v. Corin, supra,* 113 Cal.App.3d at p. 446.) It defines the relevant 'appropriations subject to limitation' as 'any authorization to expend during a fiscal year the proceeds of taxes ....' (Cal. Const., art. XIII B, § 8, subd. (b).)" (*County of Fresno, supra,* 53 Cal.3d at p. 486.)

Under section 3 of article XIII B the state may transfer financial responsibility for a program to a county if the state and county mutually agree that the appropriation limit of the state will be decreased and that of the county increased by the same amount. [9] Absent such an agreement, however,

section 6 of article XIII B generally precludes the state from avoiding the spending limits it must observe by shifting to local governments programs and their attendant financial burdens which were a state responsibility prior to the effective date of article XIII B. It does so by requiring 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 to reimburse such local government for the cost of such program or increased level of service ...." [10]

"Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles* [v. *State of California* (1987)] 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202].) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax ***351** revenues of local governments from state mandates that would require expenditure of such revenues." (*County of Fresno, supra,* 53 Cal.3d at p. 487.)

C. *Applicability of article XIII B to health care for MIA's.*

The state argues that care of the indigent, including medical care, has long been a county responsibility. It claims that although the state undertook to fund this responsibility from 1979 through 1982, it was merely temporarily (as it turned out) helping the counties meet their responsibilities, and that the subsequent reduction in state funding did not impose any "new program" or "higher level of service" on the counties within the meaning of section 6 of article XIII B. Plaintiffs respond that the critical question is not the traditional roles of the county and state, but who had the fiscal responsibility on November 6, 1979, when article XIII B took effect. The purpose of article XIII B supports the plaintiffs' position.

As we have noted, article XIII A of the Constitution (Proposition 13) and article XIII B are complementary measures. The former radically reduced county revenues, which led the state to assume responsibility for programs previously financed by the counties. Article XIII B, enacted one year later, froze both state and county appropriations at the level of the 1978-1979 budgets—a year when the budgets included state financing for the prior county programs, but not county financing for these programs. Article XIII B further limited the state's authority to transfer obligations to the counties. Reading the two together, it seems clear that article XIII B was intended to limit the power of the Legislature to retransfer to the counties those obligations which the state had assumed in the wake of Proposition 13.

Under article XIII B, both state and county appropriations limits are set on the basis of a calculation that begins with the budgets in effect when article XIII B was enacted. If the state could transfer to the county a program for which the state at that time had full financial responsibility, the county could be forced to assume additional financial obligations without the right to appropriate additional moneys. The state, at the same time, would get credit toward its appropriations limit for expenditures it did not pay. County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further; state taxpayers would discover that the state, by counting expenditures it did not pay, had acquired an actual revenue surplus while avoiding its obligation to refund revenues in excess of the appropriations limit. Such consequences are inconsistent with the purpose of article XIII B.

Our decisions interpreting article XIII B demonstrate that the state's subvention requirement under section 6 is not vitiated simply because the ***352** "program" existed before the effective date of article XIII B. The alternate phrase of section 6 of article XIII B, " 'higher level of service[,]' ... must be read in conjunction with the predecessor phrase 'new program' to give it meaning. Thus read, it is apparent that *the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.*' " (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 [233 Cal.Rptr. 38, 729 P.2d 202], italics added.)

Lucia Mar Unified School Dist. v. Honig, supra, 44 Cal.3d 830, presents a close analogy to the present case. The state Department of Education operated schools for severely handicapped students, but prior to 1979 *school districts were required by statute to contribute* to education of those students from the district at the state schools. In 1979, in response to the restrictions on school district revenues imposed by Proposition 13, the statutes requiring such district contributions were repealed and the state assumed full responsibility for funding. The state funding responsibility

continued until June 28, 1981, when Education Code section 59300 (hereafter section 59300), requiring school districts to share in these costs, became effective.

The plaintiff districts filed a test claim before the commission, contending they were entitled to state reimbursement under section 6 of article XIII B. The commission found the plaintiffs were not entitled to state reimbursement, on the rationale that the increase in costs to the districts compelled by section 59300 imposed no new program or higher level of services. The trial and intermediate appellate courts affirmed on the ground that section 59300 called for only an " 'adjustment of costs' " of educating the severely handicapped, and that "*a shift in the funding of an existing program is not a new program or a higher level of service*" within the meaning of article XIII B. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at p. 834, italics added.)

We reversed, rejecting the state's theories that the funding shift to the county of the subject program's costs does not constitute a new program. "[There can be no] doubt that although the schools for the handicapped have been operated by the state for many years, the program was new insofar as plaintiffs are concerned, since *at the time section 59300 became effective* they were not required to contribute to the education of students from their districts at such schools. [¶] ... To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIIIB. That article imposed spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIIIA, which severely limited the taxing ***353** power of local governments. ... [¶] The intent of the section would plainly be violated if the state could, while retaining administrative control [11] of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIIIB because the programs are not 'new.' Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, *or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIIIB, the result seems equally violative of the fundamental purpose underlying section 6 of that article.*" (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 835- 836, fn. omitted, italics added.)

The state seeks to distinguish *Lucia Mar* on the ground that the education of handicapped children in state schools had never been the responsibility of the local school district, but overlooks that the local district had previously been required to contribute to the cost. Indeed the similarities between *Lucia Mar* and the present case are striking. In *Lucia Mar,* prior to 1979 the state and county shared the cost of educating handicapped children in state schools; in the present case from 1971-1979 the state and county shared the cost of caring for MIA's under the Medi-Cal program. In 1979, following enactment of Proposition 13, the state took full responsibility for both programs. Then in 1981 (for handicapped children) and 1982 (for MIA's), the state sought to shift some of the burden back to the counties. To distinguish these cases on the ground that care for MIA's is a county program but education of handicapped children a state program is to rely on arbitrary labels in place of financial realities.

The state presents a similar argument when it points to the following emphasized language from *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830: "[B]ecause section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—*an obligation the school districts did not have at the time article XIII B was adopted*—it calls for plaintiffs to support a 'new program' within the meaning of section 6." (P. 836, fn. omitted, italics added.) It urges *Lucia Mar* reached its result *only* because the "program" requiring school district funding in that case *was not required by statute* at the effective date of ***354** article XIII B. The state then argues that the case at bench is distinguishable because it contends Alameda County had a continuing obligation *required by statute* antedating that effective date, which had only been "temporarily" [12] suspended when article XIII B became effective. I fail to see the distinction between a case—*Lucia Mar*—in which no existing statute as of 1979 imposed an obligation on the local government and one—this case—in which the statute existing in 1979 imposed no obligation on local government.

The state's argument misses the salient point. As I have explained, the application of section 6 of article XIII B does not depend upon when the program was created, but upon who had the burden of funding it when article XIII B went into effect. Our conclusion in *Lucia Mar* that the educational program there in issue was a "new" program as to the school districts was not based on the presence or absence of any antecedent statutory obligation therefor.

Lucia Mar determined that whether the program was new *as to the districts* depended on *when* they were compelled to assume the obligation to partially fund an existing program which they had not funded at the time article XIII B became effective.

The state further relies on two decisions, *Madera Community Hospital v. County of Madera* (1984) 155 Cal.App.3d 136 [201 Cal.Rptr. 768] and *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 [261 Cal.Rptr. 706], which hold that the county has a statutory obligation to provide medical care for indigents, but that it need not provide precisely the same level of services as the state provided under Medi-Cal. [13] Both are correct, but irrelevant to this case. [14] The county's obligation to MIA's is defined by Welfare and Institutions Code section 17000, not by the former Medi-Cal program. [15] If the ***355** state, in transferring an obligation to the counties, permits them to provide less services than the state provided, the state need only pay for the lower level of services. But it cannot escape its responsibility entirely, leaving the counties with a state-mandated obligation and no money to pay for it.

The state's arguments are also undercut by the fact that it continues to use the approximately $1 billion in spending authority, generated by its previous total funding of the health care program in question, as a portion of its initial *base spending limit* calculated pursuant to sections 1 and 3 of article XIII B. In short, the state may maintain here that care for MIA's is a county obligation, but when it computes its appropriation limit it treats the entire cost of such care as a state program.

IV. Conclusion

This is a time when both state and county governments face great financial difficulties. The counties, however, labor under a disability not imposed on the state, for article XIII A of the Constitution severely restricts their ability to raise additional revenue. It is, therefore, particularly important to enforce the provisions of article XIII B which prevent the state from imposing additional obligations upon the counties without providing the means to comply with these obligations.

The present majority opinion disserves the public interest. It denies standing to enforce article XIII B both to those persons whom it was designed to protect—the citizens and taxpayers—and to those harmed by its violation—the medically indigent adults. And by its reliance on technical grounds to avoid coming to grips with the merits of plaintiffs' appeal, it permits the state to continue to violate article XIII B and postpones the day when the medically indigent will receive adequate health care.

Mosk, J., concurred. ***356**

Footnotes

1 The complaint also sought a declaration that the county was obliged to provide health care services to indigents that were equivalent to those available to nonindigents. This issue is not before us. The County of Alameda aligned itself with plaintiffs in the superior court and did not oppose plaintiffs' effort to enforce section 6.

2 On November 23, 1987, the County of Los Angeles filed a test claim with the Commission. San Bernardino County joined as a test claimant. The Commission ruled against the counties, concluding that no state mandate had been created. The Los Angeles County Superior Court subsequently granted the counties' petition for writ of mandate (Code Civ. Proc., § 1094.5), reversing the Commission, on April 27, 1989. (No. C-731033.) An appeal from that judgment is presently pending in the Court of Appeal. (*County of Los Angeles v. State of California,* No. B049625.)

3 Plaintiffs argue that they seek only a declaration that AB 799 created a state mandate and an injunction against the shift of costs until the state decides what action to take. This is inconsistent with the prayer of

their complaint which sought an injunction requiring defendants to restore Medi-Cal eligibility to all medically indigent adults until the state paid the cost of full health services for them. It is also unavailing.

An injunction against enforcement of a state mandate is available only after the Legislature fails to include funding in a local government claims bill following a determination by the Commission that a state mandate exists. (Gov. Code, § 17612.) Whether plaintiffs seek declaratory relief and/or an injunction, therefore, they are seeking to enforce section 6.

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

4 The test claim by the County of Los Angeles was filed prior to that proposed by Alameda County. The Alameda County claim was rejected for that reason. (See § 17521.) Los Angeles County permitted San Bernardino County to join in its claim which the Commission accepted as a test claim intended to resolve the issues the majority elects to address instead in this proceeding. Los Angeles County declined a request from Alameda County that it be included in the test claim because the two counties' systems of documentation were so similar that joining Alameda County would not be of any benefit. Alameda County and these plaintiffs were, of course, free to participate in the Commission hearing on the test claim. (§ 17555.)

5 " 'Local agency' means any city, county, special district, authority, or other political subdivision of the state." (§ 17518.)

6 " 'School district' means any school district, community college district, or county superintendant of schools." (§ 17519.)

7 Plaintiffs' argument that the Legislature's failure to make provision for individual enforcement of section 6 before the Commission demonstrates an intent to permit legal actions, is not persuasive. The legislative statement of intent to relegate all mandate disputes to the Commission is clear. A more likely explanation of the failure to provide for test cases to be initiated by individuals lies in recognition that (1) because section 6 creates rights only in governmental entities, individuals lack sufficient beneficial interest in either the receipt or expenditure of reimbursement funds to accord them standing; and (2) the number of local agencies having a direct interest in obtaining reimbursement is large enough to ensure that citizen interests will be adequately represented.

8 Plaintiffs are not without a remedy if the county fails to provide adequate health care, however. They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action. (See, e.g., *Mooney v. Pickett* (1971) 4 Cal.3d 669 [94 Cal.Rptr. 279, 483 P.2d 1231].)

9 For this reason, it would be inappropriate to address the merits of plaintiff's claim in this proceeding. (Cf. *Dix v. Superior Court* (1991) 53 Cal.3d 442 [279 Cal.Rptr. 834, 807 P.2d 1063].) Unlike the dissent, we do not assume that in representing the state in this proceeding, the Attorney General necessarily represented the interests and views of these officials.

1 The majority states that "Plaintiffs are not without a remedy if the county fails to provide adequate health care .... They may enforce the obligation imposed on the county by Welfare and Institutions Code sections 17000 and 17001, and by judicial action." (Maj. opn., *ante,* p. 336, fn. 8*ante,* p. 336, fn. 8)

The majority fails to note that plaintiffs have already tried this remedy, and met with the response that, owing to the state's inadequate subvention funds, the county cannot afford to provide adequate health care.

2 It is of no importance that plaintiffs did not request issuance of a writ of mandate. In *Taschner v. City Council* (1973) 31 Cal.App.3d 48, 56 [107 Cal.Rptr. 214] (overruled on other grounds in *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 596 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038]), the court said that "[a]s against a general demurrer, a complaint for declaratory relief may be treated as a petition for mandate [citations], and where a complaint for declaratory relief alleges facts sufficient to entitle plaintiff to mandate, it is error to sustain a general demurrer without leave to amend."

In the present case, the trial court ruled on a motion for summary judgment, but based that ruling not on the evidentiary record (which supported plaintiffs' showing of irreparable injury) but on the issues as framed by

the pleadings. This is essentially equivalent to a ruling on demurrer, and a judgment denying standing could not be sustained on the narrow ground that plaintiffs asked for the wrong form of relief without giving them an opportunity to correct the defect. (See *Residents of Beverly Glen, Inc. v. City of Los Angeles* (1973) 34 Cal.App.3d 117, 127-128 [109 Cal.Rptr. 724].)

3 The majority's argument assumes that the state will comply with a judgment for plaintiffs by providing increased subvention funds. If the state were instead to comply by restoring Medi-Cal coverage for MIA's, or some other method of taking responsibility for their health needs, plaintiffs would benefit directly.

4 The majority emphasizes the statement of purpose of Government Code section 17500: "The Legislature finds and declares that the existing system for reimbursing local agencies and school districts for the costs of state-mandated local programs has not provided for the effective determination of the state's responsibilities under section 6 of article XIII B of the California Constitution. The Legislature finds and declares that the failure of the existing process to adequately and consistently resolve the complex legal questions involved in the determination of state-mandated costs has led to an increasing reliance by local agencies and school districts on the judiciary, and, therefore, in order to relieve unnecessary congestion of the judicial system, it is necessary to create a mechanism which is capable of rendering sound quasi-judicial decisions and providing an effective means of resolving disputes over the existence of state-mandated local programs."
The "existing system" to which Government Code section 17500 referred was the Property Tax Relief Act of 1972 (Rev. & Tax. Code, §§ 2201-2327), which authorized local agencies and school boards to request reimbursement from the state Controller. Apparently dissatisfied with this remedy, the agencies and boards were bypassing the Controller and bringing actions directly in the courts. (See, e.g., *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62 [222 Cal.Rptr. 750].) The legislative declaration refers to this phenomena. It does not discuss suits by individuals.

5 "(a) The initial decision by a county to opt into the system pursuant to Section 77300 *shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate*; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver. [¶] (b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987." (Gov. Code, § 77203.5, italics added.)
"As used in this chapter, 'state-mandated local program' *means any and all reimbursements owed or owing by operation of either Section 6 of Article XIII B of the California Constitution,* or Section 17561 of the Government Code, or both." (Gov. Code, § 77005, italics added.)

6 It is true that these officials would participate in a proceeding before the Commission on State Mandates, but they would do so as members of an administrative tribunal. On appellate review of a commission decision, its members, like the members of the Public Utilities Commission or the Workers' Compensation Appeals Board, are not respondents and do not appear to present their individual views and positions. For example, in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830 [244 Cal.Rptr. 677, 750 P.2d 318], in which we reviewed a commission ruling relating to subvention payments for education of handicapped children, the named respondents were the state Superintendent of Public Instruction, the Department of

Education, and the Commission on State Mandates. The individual members of the commission were not respondents and did not participate.

7 Welfare and Institutions Code section 17000 provides that "[e]very county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."

8 Article XIII B, section 1 provides: "The total annual appropriations subject to limitation of the state and of each local government shall not exceed the appropriations limit of such entity of government for the prior year adjusted for changes in the cost of living and population except as otherwise provided in this Article."

9 Section 3 of article XIII B reads in relevant part: "The appropriations limit for any fiscal year ... shall be adjusted as follows:

"(a) In the event that the financial responsibility of providing services is transferred, in whole or in part ... from one entity of government to another, then for the year in which such transfer becomes effective the appropriation limit of the transferee entity shall be increased by such reasonable amount as the said entities shall mutually agree and the appropriations limit of the transferor entity shall be decreased by the same amount. ..."

10 Section 6 of article XIII B further provides that the "Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." None of these exceptions apply in the present case.

11 The state notes that, in contrast to the program at issue in *Lucia Mar,* it has not retained administrative control over aid to MIA's. But the quoted language from *Lucia Mar,* while appropriate to the facts of that case, was not intended to establish a rule limiting article XIII B, section 6, to instances in which the state retains administrative control over the program that it requires the counties to fund. The constitutional language admits of no such limitation, and its recognition would permit the Legislature to evade the constitutional requirement.

12 The state's repeated emphasis on the "temporary" nature of its funding is a form of post hoc reasoning. At the time article XIII B was enacted, the voters did not know which programs would be temporary and which permanent.

13 It must, however, provide a *comparable* level of services. (See *Board of Supervisors v. Superior Court* (1989) 207 Cal.App.3d 552, 564 [254 Cal.Rptr. 905].)

14 Certain language in *Madera Community Hospital v. County of Madera, supra,* 155 Cal.App.3d 136, however, is questionable. That opinion states that the "Legislature intended that County bear an obligation to its poor and indigent residents, *to be satisfied from county funds,* notwithstanding federal or state programs which exist concurrently with County's obligation and alleviate, to a greater or lesser extent, County's burden." (P. 151.) Welfare and Institutions Code section 17000 by its terms, however, requires the county to provide support to residents only "when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." Consequently, to the extent that the state or federal governments provide care for MIA's, the county's obligation to do so is reduced pro tanto.

15 The county's right to subvention funds under article XIII B arises because its duty to care for MIA's is a state-mandated responsibility; if the county had no duty, it would have no right to funds. No claim is made here that the funding of medical services for the indigent shifted to Alameda County is not a program " 'mandated' " by the state; i.e., that Alameda County has any option other than to pay these costs. (*Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d at pp. 836-837.)

End of Document

State of California

BUSINESS AND PROFESSIONS CODE

Section 17500

17500. It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine.

(Amended by Stats. 1998, Ch. 599, Sec. 2.5. Effective January 1, 1999.)

West's Ann.Cal.Gov.Code § 17514

§ 17514. Costs mandated by the state

Currentness

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

Credits

(Added by Stats.1984, c. 1459, § 1.)

Notes of Decisions (16)

West's Ann. Cal. Gov. Code § 17514, CA GOVT § 17514
Current with urgency legislation through Ch. 17 of 2021 Reg.Sess

End of Document

 KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version Held Unconstitutional by California School Boards Assn. v. State of California, Cal.App. 3 Dist., Mar. 09, 2009

West's Annotated California Codes
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 4. Fiscal Affairs (Refs & Annos)
Part 7. State-Mandated Local Costs (Refs & Annos)
Chapter 4. Identification and Payment of Costs Mandated by the State (Refs & Annos)
Article 1. Commission Procedure (Refs & Annos)

West's Ann.Cal.Gov.Code § 17556

§ 17556. Findings; costs not mandated upon certain conditions

Effective: October 19, 2010

Currentness

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requests or previously requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this subdivision. This subdivision applies regardless of whether the resolution from the governing body or a letter from a delegated representative of the governing body was adopted or sent prior to or after the date on which the statute or executive order was enacted or issued.

(b) The statute or executive order affirmed for the state a mandate that has been declared existing law or regulation by action of the courts. This subdivision applies regardless of whether the action of the courts occurred prior to or after the date on which the statute or executive order was enacted or issued.

(c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. This subdivision applies regardless of whether the authority to levy charges, fees, or assessments was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

Credits

(Added by Stats.1984, c. 1459, § 1. Amended by Stats.1986, c. 879, § 4; Stats.1989, c. 589, § 1; Stats.2004, c. 895 (A.B.2855), § 14; Stats.2005, c. 72 (A.B.138), § 7, eff. July 19, 2005; Stats.2006, c. 538 (S.B.1852), § 279; Stats.2010, c. 719 (S.B.856), § 31, eff. Oct. 19, 2010.)

Editors' Notes

VALIDITY

*A prior version of this **section** was held unconstitutional as impermissibly broad, in the decision of California School Boards Assn. v. State of California (App. 3 Dist. 2009) 90 Cal.Rptr.3d 501, 171 Cal.App.4th 1183.*

Relevant Additional Resources
Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

For state reimbursement provisions relating to Stats.2004, c. 895 (A.B.2855), see Historical and Statutory Notes under Education Code § 32282.

For Governor's signing message regarding Stats.2004, c. 895 (A.B.2855), see Historical and Statutory Notes under Education Code § 32282.

Urgency effective provisions relating to Stats.2005, c. 72 (A.B.138), see Historical and Statutory Notes under Elections Code § 13304.

Stats.2006, c. 538 (S.B.1852), made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.2006, c. 538 (S.B.1852), to other 2006 legislation, see Historical and Statutory Notes under Business and Professions Code § 690.

2010 Legislation

For cost reimbursement and urgency effective provisions relating to Stats.2010, c. 719 (S.B.856), see Historical and Statutory Notes under Business and Professions Code § 154.2.

CROSS REFERENCES

"Commission" defined for purposes of this Part, see Government Code § 17512.
"Costs mandated by the federal government" defined for purposes of this Part, see Government Code § 17513.
"Costs mandated by the state" defined for purposes of this Part, see Government Code § 17514.
"Executive order" defined for purposes of this Part, see Government Code § 17516.
Funding included in school safety consolidated competitive grant, see Education Code § 41511.
"Local agency" defined for purposes of this Part, see Government Code § 17518.
Local education agencies, Los Angeles Unified School District, report on illegal activity and enforcement power, see Education Code § 35401.
"School district" defined for purposes of this Part, see Government Code § 17519.
State-mandated special education programs and services; additional revenue, see Education Code § 56836.156.

CODE OF REGULATIONS REFERENCES

Filing request for reimbursement, see 2 Cal. Code of Regs. § 1184.

RESEARCH REFERENCES

Encyclopedias

38 Cal. Jur. 3d Incompetent, Addicted, and Disordered Persons § 40, Review.
50 Cal. Jur. 3d Pollution and Conservation Laws § 134, State Policy--Coastal Marine Environment Policy.
50 Cal. Jur. 3d Pollution and Conservation Laws § 168, Generally.
50 Cal. Jur. 3d Pollution and Conservation Laws § 169, Construction, Application, and Effect of Compliance Law.
50 Cal. Jur. 3d Pollution and Conservation Laws § 171, Prohibited Discharges.
58 Cal. Jur. 3d State of California § 100, Generally.
58 Cal. Jur. 3d State of California § 101, What Constitutes Reimbursable Mandate.
58 Cal. Jur. 3d State of California § 103, What Constitutes Reimbursable Mandate--Statutory Exclusions.
58 Cal. Jur. 3d State of California § 104, What Constitutes Reimbursable Mandate--Federally Mandated Costs.
58 Cal. Jur. 3d State of California § 105, Resolution of Claims for Reimbursement.
81A Corpus Juris Secundum States § 329, Reimbursable State Mandated Programs.

Treatises and Practice Aids

9 Witkin, California Summary 10th Taxation § 119 (2019), Requirement.
9 Witkin, California Summary 10th Taxation § 120 (2019), Reimbursement Required.
9 Witkin, California Summary 10th Taxation § 123 (2019), Where Expenses Are Recoverable from Sources Other Than Taxes.
9 Witkin, California Summary 10th Taxation § 124 (2019), Local Government's Action to Avoid Expenditure.

Relevant Notes of Decisions (4)
View all 27
Notes of Decisions listed below contain your search terms.

Validity

This **section** prohibiting commission on state mandates from finding costs mandated by State if it finds that local government has authority to levy service charges, fees, or assessments sufficient to pay for mandated program or increased level of service is facially constitutional under state constitutional provision requiring State to provide subvention of funds to reimburse local government for costs of state-mandated new program or higher level of service; considered in its context, **section** effectively and properly construes term "costs" in constitutional provision as excluding expenses that are recoverable from sources other than taxes. County of Fresno v. State of California (1991) 280 Cal.Rptr. 92, 53 Cal.3d 482, 808 P.2d 235. Taxation 3237

Construction and application

State Controller's Office had the authority to rely on the **Government Code**, rather than only on the Parameters and Guidelines (P&Gs) adopted by the Commission on State Mandates, to uphold an audit rule excluding the amount of optional fees from the amount recoverable as state-mandated costs. Clovis Unified School Dist. v. Chiang (App. 3 Dist. 2010) 116 Cal.Rptr.3d 33, 188 Cal.App.4th 794, modified on denial of rehearing. States 111

Ballot initiatives

Sexually Violent Predators Act (SVPA) provisions technically restated, as required by constitution, as part enactment of Proposition 83, The Sexual Predator Punishment and Control Act: Jessica's Law, were not expressly included in a ballot measure approved by the voters within the meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties included in such a ballot measure; restated provisions were not integral to accomplishing the initiative's goals, nor was there any basis for believing that it was within the scope of the voters' intended purpose in enacting the initiative to limit the Legislature's capacity to alter or amend the provisions. County of San Diego v. Commission on State Mandates (2018) 240 Cal.Rptr.3d 52, 430 P.3d 345. States 111

Constitutionally-required technical reenactment, as part of Proposition 83, The Sexual Predator Punishment and Control Act: Jessica's Law, of Sexually Violent Predators Act (SVPA) provision stating that "[t]he rights, requirements, and procedures set forth in **Section** 6603 shall apply to all commitment proceedings" did not make that **section** "necessary to implement" Proposition 83 within meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties necessary to implement such a ballot measure; question was not whether the protections in that **section** were required by due process, but rather was whether the civil commitment program triggering those procedures was mandated by the state or by the voters. County of San Diego v. Commission on State Mandates (2018) 240 Cal.Rptr.3d 52, 430 P.3d 345. States 111

West's Ann. Cal. Gov. Code § 17556, CA GOVT § 17556
Current with urgency legislation through Ch. 17 of 2021 Reg.Sess

End of Document

California Statutes Annotated - 2019

West's Annotated California Codes
Business and Professions Code (Refs & Annos)
Division 7. General Business Regulations (Refs & Annos)
Part 3. Representations to the Public (Refs & Annos)
Chapter 1. Advertising (Refs & Annos)
Article 3. Motel and Motor Court Rate Signs (Refs & Annos)

West's Ann.Cal.Bus. & Prof.Code § 17564

§ 17564. Posting rates; number of units offered at each rate; number of persons accommodated

Currentness

It shall be unlawful for any owner or operator of any establishment within the scope of this article, located within the State of California, to post or maintain posted on any outdoor or outside advertising sign pertaining to such establishment, any rates for accommodations in such establishment unless the sign shall have posted thereon the rates charged for all rooms, or other rental units or accommodations offered for rental, the number of rooms or other rental units offered for rental at each rate, and the number of persons accommodated at the rate posted. All posted rates and descriptive data required by this article shall be in type and material of the same size and prominence as the aforesaid data. This section shall not be held to be complied with by signs stating the rate per person or bearing the legend "and up."

Credits
(Added by Stats.1953, c. 975, § 1. Amended by Stats.1961, c. 1733, § 1.)

VALIDITY

This section was held unconstitutional as a denial of equal protection to motel owners or operators in the decision of Gawzner Corp. v. Minier (App. 2. Dist. 1975), 120 Cal.Rptr. 344, 46 Cal.App.3d 777.

HISTORICAL AND STATUTORY NOTES

2017 Main Volume
The 1961 amendment substituted "the rates charged for all rooms, or other rental units or accommodations offered for rental, the number of rooms or other rental units offered for rental at each rate, and the number of persons accommodated at the rate posted" for "both the minimum and maximum room, or other rental unit rates for accommodations offered for rental" in the first sentence.

CROSS REFERENCES

False or misleading statements in general, see Business and Professions Code § 17500.
Injunctive relief, see Business and Professions Code § 17535.
Person defined for purposes of this Chapter, see Business and Professions Code § 17506.

LIBRARY REFERENCES

2017 Main Volume

Innkeepers 6, 12.
Westlaw Topic No. 213.
C.J.S. Inns, Hotels, and Eating Places §§ 19 to 22, 26 to 27.

RESEARCH REFERENCES

Encyclopedias
37 Cal. Jur. 3d Hotels and Motels § 19, Hotel Rates or Charges.
California Civil Practice Business Litigation § 61:29, Motel and Motor Court Rates.

Treatises and Practice Aids
California Business Law Deskbook § 33:8, California False Advertising Law ("Fal").
2 Witkin, California Criminal Law 4th Crimes Against Property § 242 (2012), Miscellaneous Topics.
8 Witkin, California Summary 10th Constitutional Law § 784 (2017), Invalid Classifications.
NOTES OF DECISIONS

Construction and application 2

Validity 1

1 Validity

Statutory discrimination in outdoor rate signs provision of this section, which provided that it was unlawful to post or maintain any outdoor or outside advertising sign pertaining to rates for accommodations unless sign also stated rates charged for all rooms, number of rooms offered at each rate, and number of persons accommodated at rate posted, and which applied to owners and operators of motels but not hotels, denied motels equal protection and thus such outdoor rate signs provision was unconstitutional in its application to owners and operators of motels. Gawzner Corp. v. Minier (App. 2 Dist. 1975) 120 Cal.Rptr. 344, 46 Cal.App.3d 777. Constitutional Law 3693; Innkeepers 2

2 Construction and application

When outdoor rate advertising is used by a motel owner or operator, this section requires full rate disclaimer be made, including every rate at all possible normal levels of occupancy for each room. 56 Op.Atty.Gen. 345, 8-16-73.

West's Ann. Cal. Bus. & Prof. Code § 17564, CA BUS & PROF § 17564

Current with all laws through Ch. 1016 of 2018 Reg.Sess., and all propositions on 2018 ballot.

End of Document

...

California Code, Government Code - GOV § 17573

Current as of January 01, 2019 | Updated by FindLaw Staff (https://www.findlaw.com/company/our-team.html)

Search California Codes

Search by Keyword or Citation

Enter Keyword or Citation SEARCH

« Prev (https://codes.findlaw.com/ca/government-code/gov-sect-17572.html)

Next » (https://codes.findlaw.com/ca/government-code/gov-sect-17574.html)

(a) Notwithstanding Section 17551 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ib3e38cc11ae811e9a89d8c1249eb3, the Department of Finance and a local agency, school district, or statewide association may jointly request of the chairpersons of the committees in each house of the Legislature that consider appropriations, and the chairpersons of the committees and appropriate subcommittees in each house of the Legislature that consider the State Budget, that the Legislature (1) determine that a statute or executive order, or portion thereof, mandates a new program or higher level of service requiring reimbursement of local governments pursuant to Section 6 of Article XIII B of the California Constitution (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=Ib3e38cc01ae811e9a89d8c1249eb3, (2) establish a reimbursement methodology, and (3) appropriate funds for reimbursement of costs. For purposes of this section, "statewide association" includes a statewide association representing local agencies or school districts, as defined in Sections 17518 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ib3e38cc21ae811e9a89d8c1249eb3 and 17519 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ib3e38cc31ae811e9a89d8c1249eb3.

(b) The statute of limitations specified in Section 17551 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ib3e3b3d01ae811e9a89d8c1249eb3 shall be tolled from the date a local agency, school district, or statewide association contacts the Department of Finance or responds to a Department of Finance request to initiate a joint request for a legislatively determined mandate pursuant to subdivision (a), to (1) the date that the Budget Act for the subsequent fiscal year is adopted if a joint request is submitted pursuant to subdivision (a), or (2) the date on which the Department of Finance, or a local agency, school district, or statewide association notifies the other party of its decision not to submit a joint request. A local agency, school district, or statewide association, or the Department of Finance shall provide written notification to the commission of each of these dates.

(c) A joint request made under subdivision (a) shall be in writing and include all of the following:

(1) Identification of those provisions of the statute or executive order, or portion thereof, that mandate a new program or higher level of service requiring reimbursement of local agencies or school districts pursuant to Section 6 of Article XIII B of the California Constitution (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=Ib3e401f01ae811e9a89d8c1249eb, a proposed reimbursement methodology, and the period of reimbursement.

(2) A list of eligible claimants and a statewide estimate for the initial claiming period and annual dollar amount necessary to reimburse local agencies or school districts to comply with that statute or executive order that mandates a new program or higher level of service.

(3) Documentation of significant support among local agencies or school districts for the proposed reimbursement methodology, including, but not limited to, endorsements by statewide associations and letters of approval from local agencies or school districts.

(d) A joint request authorized by this section may be submitted to the Legislature pursuant to subdivision (a) at any time after enactment of a statute or issuance of an executive order, regardless of whether a test claim on the same statute or executive order is pending with the commission. If a test claim is pending before the commission, the period of reimbursement established by that filing shall apply to a joint request filed pursuant to this section.

(e)(1) If the Legislature accepts the joint request and determines that those provisions of the statute or executive order, or portion thereof, mandate a new program or higher level of service requiring reimbursement of local agencies or school districts pursuant to Section 6 of Article XIII B of the California Constitution (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=Ib3e477201ae811e9a89d8c1249eb, it shall adopt a statute declaring that the statute or executive order, or portion thereof, is a legislatively determined mandate and specify the term and period of reimbursement and methodology for reimbursing eligible local agencies or school districts. If no term is specified in the statute, then the term shall be five years, beginning July 1 of the year in which the statute is enacted.

(2) For the purpose of this subdivision, "term" means the number of years specified in the statute adopted pursuant to this subdivision for reimbursing eligible local agencies or school districts for a legislatively determined mandate.

(f) When the Legislature adopts a statute pursuant to paragraph (1) of subdivision (e) on a mandate subject to subdivision (b) of Section 6 of Article XIIIB of the California Constitution (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=Ib3e4c5401ae811e9a89d8c1249eb3, the Legislature shall do either of the following:

(1) Appropriate in the Budget Act the full payable amount for reimbursement to local agencies that has not been previously paid.

(2) Suspend the operation of the mandate pursuant to Section 17581 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ib3e513601ae811e9a89d8c1249eb or repeal the mandate.

(g) The Department of Finance, or a local agency, school district, or statewide association shall notify the commission of actions taken pursuant to this section, as specified below:

(1) Provide the commission with a copy of any communications regarding development of a joint request under this section and a copy of a joint request when it is submitted to the Legislature.

(2) Notify the commission of the date of (A) the Legislature's action on a joint request in the Budget Act, or (B) the Department of Finance's decision not to submit a joint request on a specific statute or executive order.

(h) Upon receipt of notice that a joint request has been submitted to the Legislature on the same statute or executive order as a pending test claim, the commission may stay its proceedings on the pending test claim upon the request of any party.

(i) Upon enactment of a statute declaring a legislatively determined mandate, enactment of a reimbursement methodology, and appropriation for reimbursement of the full payable amount that has not been previously paid in the Budget Act, all of the following shall apply:

(1) The Controller shall prepare claiming instructions pursuant to Section 17558 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ib3e5afa01ae811e9a89d8c1249eb, if applicable.

(2) The commission shall not adopt a statement of decision, parameters and guidelines, or statewide cost estimate on the same statute or executive order unless a local agency or school district that has rejected the amount of reimbursement files a test claim or takes over a withdrawn test claim on the same statute or executive order.

(3) A local agency or school district accepting payment for the statute or executive order, or portion thereof, that mandates a new program or higher level of service pursuant to Section 6 of Article XIII B of the California Constitution (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000203&refType=LQ&originatingDoc=Ib3e5d6b01ae811e9a89d8c1249eb shall not be required to submit parameters and guidelines if it is the successful test claimant pursuant to Section 17557 (https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Ib3e5d6b11ae811e9a89d8c1249eb .

« Prev (https://codes.findlaw.com/ca/government-code/gov-sect-17572.html)

Next » (https://codes.findlaw.com/ca/government-code/gov-sect-17574.html)

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 9, 2022, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued November 9, 2022**
- **Test Claim filed by the County of Los Angeles on June 29, 2022**

  Sex Offenders Registration: Petitions for Termination, 21-TC-03
  Statutes 2017, Chapter 541, Section 12 (SB 384), effective January 1, 2018, operative July 1, 2021
  County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 November 9, 2022 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/9/22

Claim Number: 21-TC-03

Matter: Sex Offenders Registration: Petitions for Termination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Arlene Barrera, Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8302
abarrera@auditor.lacounty.gov

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Brian Cote, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8184
bcote@counties.org

Ted Doan, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Ted.Doan@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Amber Lozano, *Department of Justice*
Child Protection Program, Room H122, 4949 Boradway, Sacramento, CA 95820
Phone: (916) 227-3263
amber.lozano@doj.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*

3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Craig Osaki, Deputy in Charge, *Los Angeles County Public Defender's Office*
9425 Penfield Avenue #2700, Chatsworth, CA 91311
Phone: (213) 974-2811
cosaki@pubdef.lacounty.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864

Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Christina Snider, Senior Deputy County Counsel, *County of San Diego*
1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-6229
Christina.Snider@sdcounty.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*
Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820

Phone: (916) 227-5997
jeannine.willie@doj.ca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

RECEIVED
January 06, 2023
Commission on State Mandates

DEPARTMENT OF FINANCE
Gavin Newsom ▪ Governor
915 L Street ▪ Sacramento CA ▪ 95814-3706 ▪ www.dof.ca.gov

January 6, 2023

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Test Claim 21-TC-03, Sex Offenders Registration: Petitions for Termination

Dear Director Halsey:

The Department of Finance (Finance) has completed its review of test claim 21-TC-03 submitted to the Commission on State Mandates (Commission) by the County of Los Angeles (Claimant), in which the Claimant alleges it incurred reimbursable, state-mandated costs associated with Chapter 541, Statutes of 2017 (SB 384). For the reasons detailed below, Finance asserts the Commission should deny the test claim.

SB 384 made changes to the statutes governing the penalties for persons convicted of specified sex offenses. Prior to the enactment of SB 384, Penal Code (PC) Section 290 required that persons convicted of specified sex offenses register with the police department or the sheriff's department in whose jurisdiction they resided, and that this registration be maintained for the rest of their life or until they moved from California.

The lifetime registration requirement was one of the penalties imposed for committing the triggering offenses, with the intent being to prevent the offenders from recommitting the same or similar offenses by making their presence known to law enforcement and to the broader community. The preventative effect of this penalty is enhanced by PC Section 290.46, which requires the California Department of Justice to make available on a public internet website specified identifying information, including the name, photograph, and address or community of residence and Zip Code, of sex offenders required to register pursuant to PC Section 290. That the registration requirement is a penalty for the triggering offenses is substantiated by the fact that the registration requirement only applies to a person who committed those offenses.

SB 384 created a tiered sex offender registration system effective January 1, 2021. Under this new system, the length of time that a sex offender must register with law enforcement and have their information disclosed on the Department of Justice website varies depending on the offense and the severity of the offense. The registration penalty for sex offenders now varies from 10 years, 20 years, or life, with various adjustments, as specified in statute.

The Claimant alleges it incurred $316,299 in state-mandated, reimbursable costs in 2021-22 to implement the new tiered registration system, and $610,693 in such costs in 2022-23, for a total of $926,992. The Claimant alleges these costs were incurred by the Los Angeles Sheriff's Department ($55,112), the Los Angeles District Attorney's Office ($492,945) and the Los Angeles Public Defender ($378,935).

Finance asserts any costs incurred by the Claimant in relation to SB 384 are not state-reimbursable pursuant to subdivision (g) of Government Code Section 17556, excerpted below. This subdivision states the Commission shall not find reimbursable costs mandated by the state in a test claim that changes the penalty for a crime or infraction.

> (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

The changes in the sex offender registry system clearly change the penalty for a crime or infraction, and these changes relate directly to the enforcement of the crime or infraction. Consequently, the Commission should deny this test claim in its entirety.

If you have any questions regarding this letter, please contact Chris Hill, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Teresa Calvert

TERESA CALVERT
Program Budget Manager

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 6, 2023, I served the:

- **Finance's Comments on the Test Claim filed January 6, 2023**

  Sex Offenders Registration: Petitions for Termination, 21-TC-03
  Statutes 2017, Chapter 541, Section 12 (SB 384), effective January 1, 2018, operative July 1, 2021
  County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 January 6, 2023 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/5/23

Claim Number: 21-TC-03

Matter: Sex Offenders Registration: Petitions for Termination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Arlene Barrera, Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8302
abarrera@auditor.lacounty.gov

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Brian Cote, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8184
bcote@counties.org

Ted Doan, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Ted.Doan@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Amber Lozano, *Department of Justice*
Child Protection Program, Room H122, 4949 Boradway, Sacramento, CA 95820
Phone: (916) 227-3263
amber.lozano@doj.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Craig Osaki, Deputy in Charge, *Los Angeles County Public Defender's Office*
9425 Penfield Avenue #2700, Chatsworth, CA 91311
Phone: (213) 974-2811
cosaki@pubdef.lacounty.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
palkowitz@aplawoffices.onmicrosoft.com

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018

Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Christina Snider, Senior Deputy County Counsel, *County of San Diego*
1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-6229
Christina.Snider@sdcounty.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*
Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820
Phone: (916) 227-5997
jeannine.willie@doj.ca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Exhibit C

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

RECEIVED
January 30, 2023
Commission on State Mandates

ARLENE BARRERA
AUDITOR-CONTROLLER

OSCAR VALDEZ
CHIEF DEPUTY AUDITOR-CONTROLLER

ASSISTANT AUDITOR-CONTROLLERS

ROBERT G. CAMPBELL
KAREN LOQUET
CONNIE YEE

January 30, 2023

Via Drop Box

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

Dear Ms. Halsey:

RESPONSE TO THE DEPARTMENT OF FINANCE'S COMMENTS ON THE COUNTY'S SEX OFFENDERS REGISTRATION: PETITIONS FOR TERMINATION TEST CLAIM

The County of Los Angeles ("Claimant") submits the attached Comments in response to the Department of Finance's comments on our *Sex Offenders Registration: Petitions for Termination, 21-TC-03* Test Claim.

If you have any questions please call me, or your staff may contact Fernando Lemus at (213) 974-0324 or via e-mail at flemus@auditor.lacounty.gov.

Very truly yours,

Arlene Barrera
Auditor-Controller

AB:OV:CY:RA:FL

Attachment

The County of Los Angeles (County or Claimant) requests that the Commission on State Mandates (Commission) reject the Department of Finance's (DOF) comments to deny test claim 21-TC-03. The DOF contends that Senate Bill (SB) 384 made changes to the sexual registration requirement that resulted in a change in penalty and, therefore, the test claim is non-reimbursable under Government Code section 17556 (g), which prohibits reimbursement for test claims statutes that change the penalty of a crime or infraction. DOF failed to cite any authority to back up their assertions. In fact, the U.S. Supreme Court has held that sex registration requirements are nonpunitive and civil in nature. (*Smith v. Doe* (2003), 123 S.Ct. 1140, 1147.) The Court analyzed Alaska's sex offender registration requirement by examining if the State's intention was to enact a regulatory scheme that is civil and nonpunitive and, if so, to further examine whether the statutory scheme was so punitive either in purpose or effect as to negate the State's intention to deem it civil. They determined that the intent of the Alaska Legislature was to create a civil, "nonpunitive regime."

The California Supreme Court has followed this U.S. Supreme Court precedent and rejected the notion that sexual registration requirements are criminal in nature. In *In re Leon Casey ALVA*, the Court held that the registration imposed by Penal Code section 290 is not punishment, but a "legitimate, nonpunitive regulatory measure." (*In re Leon Casey ALVA*, (2004) 33 Cal.4th 254)

Claimant requests that the Commission adopt the U.S. Supreme Court and California Supreme Court's analysis of the sexual registration requirement and find that SB 384 did not change the penalty of a crime. Furthermore, Claimant urges the Commission to find that SB 384 is a reimbursable State mandate on the County and no other exemptions to reimbursement apply.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 1, 2023, I served the:

- **Claimant's Rebuttal Comments filed January 30, 2023**

  Sex Offenders Registration: Petitions for Termination, 21-TC-03
  Statutes 2017, Chapter 541, Section 12 (SB 384), effective January 1, 2018, operative July 1, 2021
  County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 February 1, 2023 at Sacramento, California.

Alexandra Peace

Alexandra Peace
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/12/23

Claim Number: 21-TC-03

Matter: Sex Offenders Registration: Petitions for Termination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Anna Barich, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Anna.Barich@csm.ca.gov

Arlene Barrera, Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8302
abarrera@auditor.lacounty.gov

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Brian Cote, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8184
bcote@counties.org

Ted Doan, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Ted.Doan@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Amber Lozano, *Department of Justice*
Child Protection Program, Room H122, 4949 Boradway, Sacramento, CA 95820
Phone: (916) 227-3263
amber.lozano@doj.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Craig Osaki, Deputy in Charge, *Los Angeles County Public Defender's Office*
9425 Penfield Avenue #2700, Chatsworth, CA 91311
Phone: (213) 974-2811
cosaki@pubdef.lacounty.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130

Phone: (858) 259-1055
palkowitz@aplawoffices.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Alexandra Peace, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
alexandra.peace@csm.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Christina Snider, Senior Deputy County Counsel, *County of San Diego*
1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-6229
Christina.Snider@sdcounty.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*
Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820
Phone: (916) 227-5997
jeannine.willie@doj.ca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Helmholst Zinzer-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

Exhibit D

March 17, 2023

Mr. Kris Cook
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

Mr. Fernando Lemus
County of Los Angeles
Department of the Auditor-Controller
500 West Temple Street, Room 603
Los Angeles, CA 90012

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Sex Offenders Registration: Petitions for Termination, 21-TC-03
Statutes 2017, Chapter 541, Section 12 (SB 384), effective January 1, 2018, operative July 1, 2021
County of Los Angeles, Claimant

Mr. Cook and Mr. Lemus:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on April 7, 2023**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[1]

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

[1] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure 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.

Hearing

This matter is set for hearing on **Friday, May 26, 2023**, at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about May 12, 2023.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names and email addresses of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

Heather Halsey
Executive Director

ITEM ___
TEST CLAIM
DRAFT PROPOSED DECISION

Penal Code Section 290.5 as Amended by

Statutes 2017, Chapter 541, Section 12 (SB 384)

Effective Date, January 1, 2018; Operative Date, July 1, 2021

Sex Offenders Registration: Petitions for Termination

21-TC-03

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim addresses Statutes 2017, chapter 541 (SB 384), which amended the Sex Offender Registration Act.[1] Specifically at issue are the changes to Penal Code section 290.5, which establishes a new procedure by which registered sex offenders may petition to terminate their duty to register as a sex offender after completing a mandatory minimum registration period based on a sex offender's tier. The test claim statute created a three-tiered system for categorizing sex offenders that set mandatory minimum registration periods of 10 years, 20 years, and life for each respective tier, which is determined by the specific offense they were convicted for and certain enhancing factors such as subsequent convictions for a registerable offense. Under prior law, all sex offenders were required to register for life, regardless of the severity of the offense.

As explained below, staff recommends that the Commission deny this claim and find that there are no costs mandated by the state because the test claim statute "eliminates a crime or infraction" within the meaning of Government Code section 17556(g).

Procedural History

The claimant filed the Test Claim on June 29, 2022.[2] On November 9, 2022, Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date. On November 30, 2022, the Department of Finance (Finance) requested a 30-day extension to file comments, which was approved for good cause. Finance filed comments on the

[1] Penal Code section 290 et seq.

[2] Exhibit A, Test Claim, filed June 29, 2022, page 1.

Test Claim on January 6, 2023.[3] The claimant filed rebuttal comments on January 30, 2023.[4] Commission staff issued the Draft Proposed Decision on March 17, 2023.[5]

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statue or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[6]

Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551(c) states that test claims "shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Section 1183.1(c) of the Commission's regulations defines 12 months as 365 days.[7]	*Timely filed* – The test claim statute became effective on January 1, 2018, but became operative on July 1, 2021, which is the earliest that a petition to terminate a duty to register as a sex offender could be filed under the test claim statute, and is the earliest that claimant alleged it first incurred costs. The claimant filed its Test Claim on June 29, 2022, within 12 months of incurring increased

[3] Exhibit B, Finance's Comments on the Test Claim, filed January 6, 2023, page 1.

[4] Exhibit C, Claimant's Rebuttal Comments, filed January 30, 2023, page 1.

[5] Exhibit D, Draft Proposed Decision, issued March 17, 2023.

[6] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[7] California Code of Regulations, title 2, section 1183.1(c).

Issue	Description	Staff Recommendation
		costs from the test claim statute.
Does the test claim statute impose a state-mandated program under article XIII B, section 6 of the California Constitution?	The test claim statute requires law enforcement agencies to report to the district attorney and the superior court of the county where the petitioner resides whether the petitioner has met the requirements for termination pursuant to section 290(e). If the law enforcement agency discovers a conviction that happened outside the state that would require registration under Section 290.005 that was not already known to the Department of Justice, the law enforcement agency must report this finding to the Department for it to determine whether the conviction changes the petitioner's tier status. If the Department needs additional time to make its determination, the law enforcement agency reports to the district attorney and court about the Department's request for an extension on time to make a determination. After receiving reports from the law enforcement agencies, the district attorney of the registering county may request a hearing if the petitioner either did not meet the requirements for termination under Section 290(e) or if community safety would be significantly enhanced by the petitioner's continued registration. If the	*Yes* – The test claim statute imposes a state-mandated program. Specifically, the test claim statute imposes state-mandated activities on law enforcement agencies and on district attorneys, but not on public defenders, who are not specifically required by the test claim statute to represent petitioners in this post-conviction civil proceeding. Law enforcement agencies must determine whether a petitioner has actually completed their mandatory minimum registration period, and are required to report their findings to the court, the registering county's district attorney, and the Department of Justice as necessary. District attorneys are authorized by the statute to challenge a petition by requesting the court hold a hearing and by presenting evidence at the hearing, if the mandatory minimum registration period was not met or if community safety would be significantly enhanced by the petitioner's continued registration, and have a duty to exercise this ability to protect public safety.[8] Although the test claim statute phrases the district attorney's activities permissively with language

[8] See *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

Issue	Description	Staff Recommendation
	district attorney requested a hearing, he or she is entitled to present evidence regarding whether community safety would be significantly enhanced by the petitioner's continued registration.	like "may request a hearing" or "be entitled to present evidence," case law suggests that the decision is not truly voluntary for the purposes of article XIII B, section 6 if it is, as a practical matter, constrained by duty.[9] In contrast, the test claim statute imposes no duties on public defenders, and there is no constitutional right to the effective assistance of counsel in state post-conviction proceedings.[10]
Does the test claim statute impose a new program or higher level of service?	For a test claim statute to impose a new program or higher level of service, its requirements must be new when compared with the legal requirements in effect immediately before its enactment and increase the level of service provided to the public.[11] In addition, the requirements must either carryout the governmental function of providing a service to the public, or impose unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.[12]	*Yes* – The statute imposes a new program or higher level of service. The mandated activities imposed on law enforcement agencies and district attorneys are new in comparison to prior law, and create a new program or higher level of service. The ability to petition to terminate a duty to register as a sex offender after completing a mandatory minimum registration period did not exist under prior law and, thus, the required activities are new. The activities required of law enforcement agencies and

[9] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[10] See *Pennsylvania v. Finley,* (1987) 481 U.S. 551, 555; *People v. Delgadillo,* (2022) 14 Cal.5th 216, 226.

[11] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig (1988) 44 Cal.3d 830, 835.*

[12] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in County of Los Angeles (1987) 43 Cal.3d 46, 56).

Issue	Description	Staff Recommendation
	Prior to the test claim statute, the only way to be relieved of the duty to register as a sex offender was if a court granted a certificate of rehabilitation. A certificate of rehabilitation restores many civil rights to a rehabilitated convict, and makes the person eligible for a pardon from the governor. Under the test claim statute it is still possible to get a certificate of rehabilitation, it just no longer has the ability to terminate a person's duty to register as a sex offender.	district attorneys serve the functional purpose of ensuring that registration continues when appropriate for individual sex offenders who still pose a risk to community safety. This carries out a governmental function of protecting and enhancing community safety, and provides a governmental service to the public. Moreover, the duties are unique to local government.
Does the test claim statute impose increased costs mandated by the state?	Government Code section 17514 defines "costs mandated by the state" as any increased costs that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds $1,000. Government Code section 17556 provides in relevant part: "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the	*No* – There are no costs mandated by the state because the test claim statute falls within the "eliminate a crime or infraction" language in Government Code section 17556(g). The Sex Offender Registration Act is enforced by Penal Code section 290.018, which makes it either a misdemeanor or felony to fail to register as required by the Act, depending on whether the person's original offense that requires registration was itself a misdemeanor or felony. Under prior law, the requirement to register annually and any time the offender moved existed for life.[13] But the test claim statute makes it so that a sex offender

[13] Former Penal Code section 290(b), as added by Statutes 2007, chapter 579, and last amended by Proposition 35, section 9, approved November 6, 2012; Penal Code section 290.012, as originally enacted by Statutes 2007, chapter 579, and as last amended by Statutes 2016, chapter 772; and Penal Code section 290.015 as originally enacted by Statutes 2007, chapter 579, and as last amended by Statutes 2016, chapter 772.

Issue	Description	Staff Recommendation
	commission finds any one of the following: ¶ . . .¶ (g) The statute….eliminated a crime or infraction….”	is no longer required to register under the Act once the offender has successfully petitioned to terminate their duty to register, as early as ten or 20 years after release. This means that once the duty to register is terminated, the offender is no longer subject to the requirements of the Sex Offender Registration Act, and any criminal penalties under Penal Code section 290.018 for failing to register or to otherwise comply for life are eliminated. Thus, the test claim statute has eliminated the crime within the meaning of Government Code section 17556(g), and, therefore, there are no costs mandated by the state.

Staff Analysis

A. The Test Claim Was Timely Filed.

Government Code section 17551(c) states that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines 12 months as 365 days.[14]

Here, the test claim statute went into effect on January 1, 2018, but because the Department of Justice required significant lead-up time to implement the new system and sort existing registered sex offenders into the three new tiers, the amended statutes had operative dates set three years later.[15] Penal Code section 290.5 as amended by the test claim statute specifically became operative on July 1, 2021.[16] This is the earliest date that a sex offender could petition to terminate their duty to register pursuant to the test claim statute, and that is the earliest date that the claimant alleges it incurred costs. The claimant filed the Test Claim on June 29, 2022, within

[14] California Code of Regulations, title 2, section 1183.1(c).

[15] Statutes 2017, Chapter 541.

[16] Statutes 2017, Chapter 541, section 12.

365 days of the test claim statute's operative date.[17] Thus, the Test Claim was timely filed within 12 months of first incurring costs.

B. Penal Code Section 290.5, as Amended by Statutes 2017, Chapter 541, Imposes State-mandated Activities on County Law Enforcement Agencies and District Attorneys, but not on Public Defenders.

Staff finds that the test claim statute imposes state-mandated activities on law enforcement agencies and on district attorneys, but not on public defenders, who are not specifically required by the test claim statute to represent petitioners in this post-conviction civil proceeding. Law enforcement agencies must determine whether a petitioner has actually completed their mandatory minimum registration period, and are required to report their findings to the court, the registering county's district attorney, and the Department of Justice as necessary. District attorneys are authorized by the statute to challenge a petition by requesting the court hold a hearing and by presenting evidence at the hearing, if the mandatory minimum registration period was not met or if community safety would be significantly enhanced by the petitioner's continued registration, and have a duty to exercise this ability to protect public safety.[18] Although the test claim statute phrases the district attorney's activities permissively with language like "may request a hearing" or "be entitled to present evidence," case law suggests that a local decision is not truly voluntary for the purposes of article XIII B, section 6 if it is, as a practical matter, constrained by duty.[19] In contrast, the test claim statute imposes no duties on public defenders, and there is no constitutional right to the effective assistance of counsel in state post-conviction proceedings.[20]

C. The Mandated Activities Constitute a New Program or Higher Level of Service.

Staff further finds that the mandated activities imposed on law enforcement agencies and district attorneys are new in comparison to prior law, and create a new program or higher level of service. The ability to petition to terminate a duty to register as a sex offender after completing a mandatory minimum registration period did not exist under prior law and, thus, the required activities are new. The activities required of law enforcement agencies and district attorneys serve the functional purpose of ensuring that registration continues when appropriate for individual sex offenders who still pose a risk to community safety. This carries out a governmental function of protecting and enhancing community safety, and provides a governmental service to the public. Moreover, the duties are unique to local government.

---

[17] Exhibit A, Test Claim, filed June 29, 2022, page 1.

[18] See *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[19] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[20] See *Pennsylvania v. Finley,* (1987) 481 U.S. 551, 555; *People v. Delgadillo,* (2022) 14 Cal.5th 216, 226.

D. There Are no Costs Mandated by the State Because the Test Claim Statute Falls Within the Government Code Section 17556(g) Exception for Statutes that "eliminate a crime or infraction.

Staff finds the state-mandated activities do not impose costs mandated by the state because the test claim statute eliminates a crime within the meaning of article XIII B, section 6 and Government Code section 17556(g). Government Code section 17556(g) provides that the Commission "shall not find costs mandated by the state" when "the statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction." The Sex Offender Registration Act is enforced by Penal Code section 290.018, which makes it either a misdemeanor or felony to fail to register as required by the Act, depending on whether the person's original offense that requires registration was itself a misdemeanor or felony. Under prior law, the requirement to register annually and any time the offender moved existed for life.[21] But the test claim statute makes it so that a sex offender is no longer required to register under the Act once the offender has successfully petitioned to terminate their duty to register, as early as ten or 20 years after release. This means that once the duty to register is terminated, the offender is no longer subject to the requirements of the Sex Offender Registration Act, and any criminal penalties under Penal Code section 290.018 for failing to register or to otherwise comply for life are eliminated. Thus, the test claim statute has eliminated the crime within the meaning of Government Code section 17556(g), and, therefore, there are no costs mandated by the state.

Conclusion

Based on the forgoing analysis, staff finds that the test claim statutes do not impose a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision to deny the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

[21] Former Penal Code section 290(b), as added by Statutes 2007, chapter 579, and last amended by Proposition 35, section 9, approved November 6, 2012; Penal Code section 290.012, as originally enacted by Statutes 2007, chapter 579, and as last amended by Statutes 2016, chapter 772; and Penal Code section 290.015 as originally enacted by Statutes 2007, chapter 579, and as last amended by Statutes 2016, chapter 772.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Section 290.5, as Amended by Statutes 2017, Chapter 541, Section 12 (SB 384); Effective Date January 1, 2018; Operative Date July 1, 2021 Filed on June 29, 2022 County of Los Angeles, Claimant	Case No.: 21-TC-03 *Sex Offenders Registration: Petitions for Termination* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted May 26, 2023*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 26, 2023. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to deny the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	**Vote**
Lee Adams, County Supervisor	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Scott Morgan, Representative of the Director of the Office of Planning and Research	
Renee Nash, School District Board Member	
Lynn Paquin, Representative of the State Controller, Vice Chairperson	
Sarah Olsen, Public Member	
Spencer Walker, Representative of the State Treasurer	

Summary of the Findings

The test claim statute amended the Sex Offender Registration Act to create a three-tiered system for classifying sex offenders based on the severity of the offense and the individual's likelihood for reoffending. Primarily at issue is a new procedure in Penal Code section 290.5, as amended by the test claim statute, which allows tier one or tier two sex offenders to petition the superior court in the county where they currently reside to terminate their duty to register as a sex offender after completing a mandatory minimum registration period. Under prior law, the duty to register as a sex offender persisted for life with rare exceptions,[22] but now a duty to register may be terminated 10 or 20 years after release from incarceration, placement, commitment or release on probation or other supervision.[23]

The petition to terminate the duty to register as a sex offender is served on the law enforcement agency and district attorney of the county where the petitioner currently resides, as well as the law enforcement agency and district attorney of the county where the petitioner was convicted for their registering offense if different from their county of residence. The law enforcement agencies of both counties (assuming the conviction was in a county other than the county of residence) determine whether the petitioner has satisfied their mandatory minimum registration period, and report their findings to the court and district attorney of the county where the petitioner resides, as well as to the Department of Justice if it is discovered that previously unknown registerable convictions occurred outside the state. The district attorney of the county where the petitioner resides may request the court hold a hearing on the petition if the petitioner did not complete the minimum mandatory registration period or if community safety would be significantly enhanced by the petitioner's continued registration. The district attorney is entitled to present evidence at the hearing as to why community safety would be significantly enhanced by the petitioner's continued registration. If the district attorney does not request a hearing, the court may either approve or summarily deny the petition based on whether the petitioner meets all the statutory requirements for approval and service and filing requirements. If the petition is denied, the court must set a time period of a minimum one year but not to exceed five years before the petitioner is allowed to petition again.

The Commission finds that the Test Claim was timely filed.

The Commission further finds that the test claim statute imposes state-mandated activities on law enforcement agencies and on district attorneys, but not on public defenders, who are not specifically required by the test claim statute to represent petitioners in this post-conviction civil proceeding. Law enforcement agencies must determine whether a petitioner has actually completed their mandatory minimum registration period, and are required to report their findings to the court, the registering county's district attorney, and the Department of Justice as necessary. District attorneys are authorized by the statute to challenge a petition by requesting the court hold a hearing and presenting evidence at the hearing, if the mandatory minimum registration period was not met or if community safety would be significantly enhanced by the petitioner's

[22] Former Penal Code section 290(b), as added by Statutes 2007, chapter 579, and last amended by Proposition 35, section 9, approved November 6, 2012.

[23] Penal Code section 290(d), as added by Statutes 2017, chapter 541.

continued registration, and have a duty to exercise this ability to protect public safety.[24] Although the test claim statute phrases the district attorney's activities permissively with language like "may request a hearing" or "be entitled to present evidence," case law suggests that a local decision is not truly voluntary for the purposes of article XIII B, section 6 if it is, as a practical matter, constrained by duty.[25] In contrast, the test claim statute imposes no duties on public defenders, and there is no constitutional right to the effective assistance of counsel in state post-conviction proceedings.[26]

The Commission further finds that the mandated activities imposed on law enforcement agencies and district attorneys are new in comparison to prior law, and constitute a new program or higher level of service. The ability to petition to terminate a duty to register as a sex offender after completing a mandatory minimum registration period did not exist under prior law and, thus, the required activities are new. The activities required of law enforcement agencies and district attorneys serve the functional purpose of ensuring that registration continues when appropriate for individual sex offenders who still pose a risk to community safety. This carries out a governmental function of protecting and enhancing community safety, and provides a governmental service to the public. Moreover, the duties are unique to local government.

However, the Commission finds these state-mandated activities do not impose costs mandated by the state because the test claim statute eliminates a crime within the meaning of article XIII B, section 6 and Government Code section 17556(g). Government Code section 17556(g) provides that the Commission "shall not find costs mandated by the state" when "the statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction." The Sex Offender Registration Act is enforced by Penal Code section 290.018, which makes it either a misdemeanor or felony to fail to register as required by the Act, depending on whether the person's original offense that requires registration was itself a misdemeanor or felony. Under prior law, the requirement to register annually and any time the offender moved existed for life.[27] But the test claim statute makes it so that a sex offender is no longer required to register under the Act once the offender has successfully petitioned to terminate their duty to register, as early as ten or 20 years after release. This means that once the duty to register is terminated, the offender is no longer subject to the requirements of the Sex

---

[24] See *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[25] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[26] See *Pennsylvania v. Finley,* (1987) 481 U.S. 551, 555; *People v. Delgadillo,* (2022) 14 Cal.5th 216, 226.

[27] Former Penal Code section 290(b), as added by Statutes 2007, chapter 579, and last amended by Proposition 35, section 9, approved November 6, 2012; Penal Code section 290.012, as originally enacted by Statutes 2007, chapter 579, and as last amended by Statutes 2016, chapter 772; and Penal Code section 290.015 as originally enacted by Statutes 2007, chapter 579, and as last amended by Statutes 2016, chapter 772.

Offender Registration Act, and any criminal penalties under Penal Code section 290.018 for failing to register or to otherwise comply for life are eliminated. Thus, the test claim statute has eliminated the crime within the meaning of Government Code section 17556(g), and, therefore, there are no costs mandated by the state.

Accordingly, the Commission denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2018	Statutes 2017, chapter 541became effective.
07/01/2021	Section 12 of Statutes 2017, chapter 541, which amended Penal Code section 290.5, became operative.
06/29/2022	The claimant filed the Test Claim.[28]
11/09/2022	Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date.
11/30/2022	The Department of Finance (Finance) requested and was granted an extension to file comments.
01/06/2023	Finance filed comments on the Test Claim.[29]
01/30/2023	The claimant filed rebuttal comments.[30]
03/17/2023	Commission staff issued the Draft Proposed Decision.[31]

II. Background

A. California's Sex Offender Registry

California was the first state to enact sex offender registration laws in 1947.[32] Before the enactment of the test claim statute, the Sex Offender Registration Act[33] required any person living in California who had been convicted of one of several enumerated sexual offenses in California, another state, or by a federal or military court, after July 1, 1944, "for the rest of his or her life while residing in California," register with law enforcement as follows:

> Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police

[28] Exhibit A, Test Claim, filed June 29, 2022.

[29] Exhibit B, Finance's Comments on the Test Claim, filed January 6, 2023.

[30] Exhibit C, Claimant's Rebuttal Comments, filed January 30, 2023.

[31] Exhibit D, Draft Proposed Decision, issued March 17, 2023.

[32] Statutes 1947, chapter 1124.

[33] Penal Code section 290, et seq.

> department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.[34]

Registration is required upon release from incarceration, placement, commitment, or probation.[35] Beginning on the first birthday following registration, the person is required to register annually using the Department of Justice's annual update form within five days of the registrant's birthday, whenever the sex offender moves residences within the jurisdiction, and people who are living as transients or were convicted as Sexually Violent Predators are additionally required to update their registration every 30 or 90 days respectively.[36]

The Act is enforced by Penal Code section 290.018, which states that failure to register as required by the Act, or a violation of any requirement of the Act (including the failure to provide the information required to register), is a misdemeanor punishable by up to a year imprisonment in county jail if the registering offense was a misdemeanor, or a felony punishable by up to three years imprisonment in state prison if the registering offense was a felony.[37]

Over time, the Act grew to cover additional offenses and impose new requirements on sex offenders and the local and state government agencies that manage the registry, but one thing was consistent: with rare exceptions, if a person was convicted for an offense that created a duty

---

[34] Former Penal Code section 290(b), as added by Statutes 2007, chapter 579, and last amended by Proposition 35, section 9, approved November 6, 2012.

[35] Penal Code section 290.015, as originally enacted by Statutes 2007, chapter 579, and as last amended by Statutes 2016, chapter 772.

[36] Penal Code section 290.012, as originally enacted by Statutes 2007, chapter 579, and as last amended by Statutes 2016, chapter 772.

[37] Penal Code section 290.018(a), (b), as added by Statutes 2007, chapter 579, and amended by Statutes 2016, chapter 772. Penal Code section 290.015 requires the offender to provide the following information on registration: (1) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address; (2) fingerprints and a current photograph; (3) license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person; (4) list of all Internet identifiers actually used by the person, as required by Section 290.024; (5) a statement in writing, signed by the person, acknowledging that the person is required to register and update the information required by this chapter; and (6) copies of adequate proof of residence, "which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact."

to register as a sex offender, that duty existed for life, so long as they lived in California.[38] Up until the test claim statute went into effect, California was one of only four states that required all sex offenders register for life, the other three being Florida, South Carolina, and Alabama.[39] One other state required all its sex offenders register for a finite duration, while the remaining 45 states used some type of tiered system where registration duration is determined by either the sex offender's risk for re-offense, the severity of the offense, or both.[40] Requiring all sex offenders register for life resulted in California not only having the oldest sex offender registry in the United States, but the largest too.[41] By the time the test claim statute was enacted in 2017, there were over 100,000 registered sex offenders living in California.[42] Many of these were for misdemeanor convictions or people found to have a low risk of re-offense.[43]

In 2010 the California Sex Offender Management Board (CASOMB) published its recommended policies for future legislation regarding sex offenders.[44] It found that requiring lifetime registration for all sex offenders resulted in law enforcement agencies and the public having no way of differentiating high risk and low risk sex offenders.[45] Law enforcement agencies were unable to concentrate their limited resources on closely supervising the most dangerous sex offenders and those with a higher risk of re-offense.[46] It determined that imposing lifetime registration for all sex offenders was not necessary to safeguard the public, and recommended implementing a risk-based system with differentiated registration requirements.[47] As proposed by CASOMB, this would be a three-tiered system with registration durations of 10 years, 20 years, or lifetime, and the criteria for determining a person's tier would take into

---

[38] Former Penal Code section 290(b), as added by Statutes 2007, chapter 579, and amended by Proposition 35, section 9, approved November 6, 2012.

[39] Exhibit X (4), Senate Rules Committee, Office of Senate Floor Analysis, Unfinished Business on SB 384, as amended September 8, 2017, page 5.

[40] Exhibit X (9), California Sex Offender Management Board, Recommendations Report (January 2010), page 53-54.

[41] Exhibit X (9), California Sex Offender Management Board, Recommendations Report (January 2010), page 50.

[42] Exhibit X (3), Senate Rules Committee, Office of Senate Floor Analysis, Third Reading Analysis of SB 384, as amended September 8, 2017, page 12.

[43] Exhibit X (3), Senate Rules Committee, Office of Senate Floor Analysis, Third Reading Analysis of SB 384, as amended September 8, 2017, page 12.

[44] Exhibit X (9), California Sex Offender Management Board, Recommendations Report (January 2010).

[45] Exhibit X (9), California Sex Offender Management Board, Recommendations Report (January 2010), page 50.

[46] Exhibit X (9), California Sex Offender Management Board, Recommendations Report (January 2010), page 50.

[47] Exhibit X (9), California Sex Offender Management Board, Recommendations Report (January 2010), page 51.

consideration the seriousness of the offender's criminal history, the empirically assessed risk level of the offender, and whether the offender is a recidivist or has violated California's sex offender registration law.[48]

B. Federal Law –The Adam Walsh Act

The Adam Walsh Child Protection and Safety Act of 2006 is a federal law amending the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act that requires each state to maintain its own jurisdiction-wide sex offender registry.[49] The Adam Walsh Act recommends a three-tiered system in which tier 1 sex offenders are required to keep their registration current for 15 years, tier 2 sex offenders register for 25 years, and tier 3 sex offenders register for life.[50] A jurisdiction that fails to substantially implement the requirements of the Act is subject to a ten percent reduction in the funding it would otherwise receive under the Omnibus Crime Control and Safe Street Act of 1968.[51]

Although the legislative history of the test claim statute does note conforming with the Adam Walsh Act as one reason for moving to a tiered system,[52] the existing sex offender registry with its lifetime registration requirement was found by the U.S. Department of Justice to substantially conform to the Adam Walsh Act, meaning there was no actual risk of defunding that demanded implementing this change.[53] Additionally, the Adam Walsh Act does not require sex offenders actively petition to be removed from the registry at the end of the registration period, or dictate any other procedure to relieve sex offenders of their duty to register at the end of a registration period. This makes the entire petition and hearing process outlined in the test claim statute an activity that was not mandated by federal law, even if the tiered registration system were mandated by federal law.

C. Certificates of Rehabilitation

Under prior law, the only way a person could be relieved of their duty to register as a sex offender in California was by receiving a certificate of rehabilitation.[54] Former section 290.5, as last amended in 2014, provided that "A person required to register under Section 290 for an offense not listed in paragraph (2), upon obtaining a certificate of rehabilitation under Chapter

---

[48] Exhibit X (9), California Sex Offender Management Board, Recommendations Report (January 2010), page 96.

[49] United States Code, title 34, section 20911 et seq.

[50] United States Code, title 34, section 20915.

[51] United States Code, title 34, section 20927.

[52] Exhibit X (2), Assembly Committee on Public Safety, Analysis of SB 421, as amended May 26, 2017, page 14.

[53] Exhibit X (2), Assembly Committee on Public Safety, Analysis of SB 421, as amended May 26, 2017, page 14.

[54] Penal Code section 4852.01 et seq., as last amended by Statutes 2015, chapter 378.

3.5 (commencing with Section 4852.01) of Title 6 of Part 3, shall be relieved of any further duty to register under Section 290 if he or she is not in custody, on parole, or on probation."[55]

A certificate of rehabilitation is proof that a person has been successfully rehabilitated in the eyes of the law and restores several civil rights. For example, a person who has received a certificate of rehabilitation cannot be denied a business license based on their criminal history.[56] Neither can a person's criminal history be used to discredit them as a witness when testifying in a trial.[57] Being granted a certificate of rehabilitation also is treated as an automatic application to the governor for a pardon, which can be granted without any additional investigation.[58]

Prior to 1996, Penal Code section 290.5 said that anyone granted a certificate of rehabilitation would be relieved of their duty to register as a sex offender. However, in 1996, the Legislature amended section 290.5 to severely limit this ability by stating that a certificate of rehabilitation would not relieve a duty to register for several stated offenses unless the offender also received a full pardon from the governor.[59]

Today, sex offenders are only able to receive a certificate of rehabilitation if they were convicted of misdemeanor sexual offenses, or felony sex offenses where the person was granted probation, and the accusatory pleading was dismissed pursuant to Penal Code section 1203.4, "if the petitioner has not been incarcerated in a prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading, is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years' residence in this state prior to the filing of the petition."[60]

Although the test claim statute made amendments so that a certificate of rehabilitation will no longer relieve a person of their duty to register as a sex offender, the certificate of rehabilitation procedure still exists. A person who was eligible under prior law to have their registration requirement terminated through a certificate of rehabilitation can petition for both a certificate of rehabilitation and to be terminated from the registry under current law, and would have good reasons to seek both for the different types of relief each grants.

---

[55] Former Penal Code section 290.5, as last amended by Statutes 2014, chapter 280.

[56] Business and Professions Code section 480(b).

[57] Evidence Code section 788.

[58] Penal Code section 4852.16(a).

[59] Former Penal Code section 290.5, as amended by Statutes 1996, chapter 461.

[60] Penal Code section 4852.01(a), (b), as amended by Statutes 2022, chapter 776, section 1, effective January 1, 2023. Section 4852.01(c) further states the following: "This chapter does not apply to persons serving a mandatory life parole, persons committed under death sentences, persons convicted of a violation of Section 269, subdivision (c) of Section 286, subdivision (c) of Section 287, Section 288, Section 288.5, Section 288.7, subdivision (j) of Section 289, or subdivision (c) of former Section 288a, or persons in military service."

D. Statute 2017, Chapter 541 (SB 384), the Test Claim Statute

Statutes 2017, chapter 541 became effective on January 1, 2018, with an operative date of July 1, 2021 to allow the Department of Justice adequate time to implement a new system.[61] The test claim statute established a three-tiered system for categorizing sex offenders, and created a process through which people registered in lower tiers may terminate their duty to register after completing a mandated minimum registration period. The claimant pleads Penal Code section 290.5, as amended by the test claim statute (Stats 2017, ch. 541, sec. 12), but there are a few other Penal Code sections amended by the test claim statute that are relevant to the analysis and are described below, though the Commission does not take jurisdiction over them since they were not pled.

1. Amendments to Penal Code Section 290.

Statutes 2017, chapter 541 amended section 290,[62] and subdivision (b) now states, with amendments in underline:

> (b) Every person described in subdivision (c), <u>for the period specified in subdivision (d)</u> while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall register thereafter in accordance with the Act, <u>unless the duty to register is terminated pursuant to Section 290.5 or as otherwise provided by law.</u>

Section 290(c) lists all the offenses that require registering under the act, and was unchanged by the test claim statute.

Section 290(d) was added by the test claim statute and requires a tier one sex offender to register for a minimum 10 years "following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision," tier two sex offenders register for a minimum 20 years "following a conviction and release from incarceration, placement, commitment, or release on probation or other supervision," and tier three sex offenders register for life. It also states the criteria for determining a sex offender's tier based on the specific offense committed and certain enhancing factors such as subsequent convictions for registerable offenses or the person's risk level on the static risk assessment instrument for sex offenders (SARATSO).

---

[61] Exhibit X (1) Senate Committee on Appropriations, Analysis of SB 421, as introduced April 17, 2017, page 2.

[62] Statutes 2017, Chapter 541, sections 1 through 2.5.

The test claim statute also added section 290(e) to define when the minimum time period for the completion of the required registration period begins, and ways that the registration period can be extended or restarted, as follows:

> (e) The minimum time period for the completion of the required registration period in tier one or two commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The minimum time for the completion of the required registration period for a designated tier is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation or parole shall not toll the required registration period. The minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction. If a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

Lastly, section 290(f) was added to note that a ward of the juvenile court is not required to register under this statute, except as provided by section 290.008.

2. Amendments to Penal Code Section 290.5

The test claim statute amended Penal Code section 290.5,[63] which under prior law simply acknowledged that a Certificate of Rehabilitation would relieve a person of their duty to register.[64]

The amended section now: (1) grants tier one or two offenders the ability to petition the court to be terminated from the sex offender registry after completing their mandated minimum registration period; (2) requires law enforcement agencies to determine whether the petitioner has met their mandatory minimum registration period, grants district attorneys the authority to request a hearing on the petition, and grants courts the authority to approve or deny the petition without a hearing if the district attorney did not request one; (3) authorizes district attorneys to present evidence at a hearing and states the factors courts should consider when determining whether or not to approve a petition at a hearing; (4) requires courts to set a time period before a petitioner is allowed to petition again if their petition is denied; and (5) requires courts to notify

[63] Statutes of 2017, chapter 541, sections 11 and 12.

[64] Former Penal Code section 290.5, as last amended by Statutes 2014, chapter 280.

the Department of Justice of the outcome of the petition. As amended, Section 290.5(a) now states:

> (a)(1) A person who is required to register pursuant to Section 290 and who is a tier one or tier two offender may file a petition in the superior court in the county in which he or she is registered for termination from the sex offender registry at the expiration of his or her mandated minimum registration period, or if the person is required to register pursuant to Section 290.008, he or she may file the petition in juvenile court on or after his or her birthday following the expiration of the mandated minimum registration period. The petition shall contain proof of the person's current registration as a sex offender.
>
> (2) The petition shall be served on the registering law enforcement agency and the district attorney in the county where the petition is filed and on the law enforcement agency and the district attorney of the county of conviction of a registerable offense if different than the county where the petition is filed. The registering law enforcement agency and the law enforcement agency of the county of conviction of a registerable offense if different than the county where the petition is filed shall, within 60 days of receipt of the petition, report to the district attorney and the superior or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination pursuant to subdivision (e) of Section 290. If an offense which may require registration pursuant to Section 290.005 is identified by the registering law enforcement agency which has not previously been assessed by the Department of Justice, the registering law enforcement agency shall refer that conviction to the department for assessment and determination of whether the conviction changes the tier designation assigned by the department to the offender. If the newly discovered offense changes the tier designation for that person, the department shall change the tier designation pursuant to subdivision (d) of Section 290 within three months of receipt of the request by the registering law enforcement agency and notify the registering law enforcement agency. If more time is required to obtain the documents needed to make the assessment, the department shall notify the registering law enforcement agency of the reason that an extension of time is necessary to complete the tier designation. The registering law enforcement agency shall report to the district attorney and the court that the department has requested an extension of time to determine the person's tier designation based on the newly discovered offense, the reason for the request, and the estimated time needed to complete the tier designation. The district attorney in the county where the petition is filed may, within 60 days of receipt of the report from either the registering law enforcement agency, the law enforcement agency of the county of conviction of a registerable offense if different than the county where the petition is filed, or the district attorney of the county of conviction of a registerable offense, request a hearing on the petition if the petitioner has not fulfilled the requirement described in subdivision (e) of Section 290, or if community safety would be significantly enhanced by the person's continued registration. If no hearing is requested,

the petition for termination shall be granted if the court finds the required proof of current registration is presented in the petition, provided that the registering agency reported that the person met the requirement for termination pursuant to subdivision (e) of Section 290, there are no pending charges against the person which could extend the time to complete the registration requirements of the tier or change the person's tier status, and the person is not in custody or on parole, probation, or supervised release.

(3) If the district attorney requests a hearing, he or she shall be entitled to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration. In determining whether to order continued registration, the court shall consider: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for less than 24 hours); criminal and relevant noncriminal behavior before and after conviction for the registerable offense; the time period during which the person has not reoffended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and the person's current risk of sexual or violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available. Any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is reliable, material, and relevant.

(4) If termination from the registry is denied, the court shall set the time period after which the person can repetition for termination, which shall be at least one year from the date of the denial, but not to exceed five years, based on facts presented at the hearing. The court shall state on the record the reason for its determination setting the time period after which the person may repetition.

(5) The court shall notify the Department of Justice, California Sex Offender Registry, when a petition for termination from the registry is granted or denied. If the petition is denied, the court shall also notify the Department of Justice, California Sex Offender Registry, of the time period after which the person can file a new petition for termination.

As amended, section 290.5(b) allows certain tier two and tier three offenders to petition to be terminated from the registry earlier than is normally permitted, and now states:

(b)(1) A person required to register as a tier two offender, pursuant to paragraph (2) of subdivision (d) of Section 290, may petition the superior court for termination from the registry after 10 years from release from custody on the registerable offense if all of the following apply: (A) the registerable offense involved no more than one victim 14 to 17 years of age, inclusive; (B) the offender was under 21 years of age at the time of the offense; (C) the registerable offense is not specified in subdivision (c) of Section 667.5, except subdivision (a) of Section 288; and (D) the registerable offense is not specified in Section 236.1.

(2) A tier two offender described in paragraph (1) of subdivision (b) may file a petition with the superior court for termination from the registry only if he or she has not been convicted of a new offense requiring sex offender registration or an offense described in subdivision (c) of Section 667.5 since the person was released from custody on the offense requiring registration pursuant to Section 290, and has registered for 10 years pursuant to subdivision (e) of Section 290. The court shall determine whether community safety would be significantly enhanced by requiring continued registration and may consider the following factors: whether the victim was a stranger (known less than 24 hours) at the time of the offense; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior before and after the conviction for the registerable offense; whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person's current risk of sexual or violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if known. If the petition is denied, the person may not repetition for termination for at least one year.

(3) A person required to register as a tier three offender based solely on his or her risk level, pursuant to subparagraph (D) of paragraph (3) of subdivision (d) of Section 290, may petition the court for termination from the registry after 20 years from release from custody on the registerable offense, if the person (A) has not been convicted of a new offense requiring sex offender registration or an offense described in subdivision (c) of Section 667.5 since the person was released from custody on the offense requiring registration pursuant to Section 290, and (B) has registered for 20 years pursuant to subdivision (e) of Section 290; except that a person required to register for a conviction pursuant to Section 288 or an offense listed in subdivision (c) of Section 1192.7 who is a tier three offender based on his or her risk level, pursuant to subparagraph (D) of paragraph (3) of subdivision (d) of Section 290, shall not be permitted to petition for removal from the registry. The court shall determine whether community safety would be significantly enhanced by requiring continued registration and may consider the following factors: whether the victim was a stranger (known less than 24 hours) at the time of the offense; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior before and after the conviction for the registerable offense; whether the offender has successfully completed a Sex Offender Management Board-certified sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person's current risk of sexual or violent reoffense, including the person's risk levels on SARATSO static,

dynamic, and violence risk assessment instruments, if known. If the petition is denied, the person may not repetition for termination for at least three years.[65]

Section 290.5(c) sets the section's operative date as July 1, 2021.

3. Amendments to Penal Code 4852.03

Penal Code section 4852.03 provides the requirements to be eligible for a certificate of rehabilitation. The test claim statute amended Penal Code section 4852.03(a)(2), to specifically state that a certificate of rehabilitation issued after July 1, 2021, does not relieve a person of the obligation to register as a sex offender, unless the person complies with Penal Code section 290.5, and the specific amended subparagraphs provide as follows (in strikeout and underline):

> (2) (A) An additional five years in the case of a person convicted of committing an offense or attempted offense for which sex offender registration is required pursuant to Sections 290 to 290.024, inclusive.~~, except that in the case of a person convicted of a violation of subdivision (b), (c), or (d) of Section 311.2, or of Section 311.3, 311.10, or 314, an additional two years.~~
>
> (B) A certificate of rehabilitation issued on or after July 1, 2021, does not relieve a person of the obligation to register as a sex offender unless the person obtains relief granted under Section 290.5.

E. Prior Commission Decisions Addressing the Sex Offender Registration Act

On August 23, 2001, the Commission adopted a Decision in *Sex Offenders: Disclosure by Law Enforcement Officers,* 97-TC-15, which addressed Penal Code sections 290 and 290.4, as amended in 1996 and 1997. The Commission denied reimbursement for any activity related to new crimes added by the Legislature, the conviction of which required the registration of the offender, based on Government Code section 17556(g). The Commission reasoned as follows:

> As stated above, if these convicted sex offenders fail to register as a sex offender, they will now be guilty of a misdemeanor, felony and/or a continuing offense; whereas before the test claim legislation, they would not have been guilty of a crime. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.[66]

---

[65] Penal Code section 290.5 has been subsequently amended by Statutes 2020 Chapter 29 (SB 118), to require all petitioners to wait until their first birthday after July 1, 2021 and after completing the mandatory registration period before filing a petition; to require law enforcement agencies to report receiving a petition to the Department of Justice; to clarify that courts have the authority to approve or summarily deny petitions if the district attorney did not request a hearing; to require the court to clearly state the reason for summarily denying a petition; and to make other non-substantive grammatical changes.

[66] Exhibit X (5), Commission on State Mandates, Decision on *Sex Offenders Disclosure by Law Enforcement Officers*, 97-TC-15, adopted on August 23, 2001, page 6, https://csm.ca.gov/decisions/sod502.pdf (accessed on January 31, 2023).

The Commission approved reimbursement for various notice, record-keeping, and communication activities with the Department of Justice.[67]

On September 27, 2005, the Commission adopted its Decision on *Reconsideration of Sex Offenders: Disclosure by Law Enforcement Officers*, 04-RL-9715-06, as directed by Statutes 2004, chapter 316 (AB 2851), which required the Commission to reconsider the Test Claim "in light of federal statutes enacted and federal and state court decisions rendered" since the test claim statutes were enacted.[68] The Commission found that three previously approved activities were enacted because of the federal Megan's Law sex offender registration program that existed at the time, and were determined to be part and parcel of that federal law.

On January 24, 2014, the Commission adopted its Decision in *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03, partially approving the Test Claim. The Commission denied the activities that changed the penalty for a crime or infraction within the meaning of Government Code section 17556(g), and approved the remaining new administrative requirements and the requirements to use SARATSO to assess those persons previously convicted of a sex offense, and include that information in certain reports for the Department of Corrections and Rehabilitation.[69]

III. Positions of the Parties

A. County of Los Angeles

The claimant, County of Los Angeles, alleges that the test claim statute imposes a reimbursable state mandated program under article XIII B, section 6 of the California Constitution. The claimant asserts that Statutes 2017, chapter 541, section 12 amends Penal Code section 290.5(a)(2) to create newly mandated activities for public defenders, law enforcement agencies, and district attorneys, and amends Penal Code section 290.5(a)(3) to create newly mandated activities for district attorneys and public defenders.

The claimant alleges that to comply with the requirements of section 290.5(a)(2), public defenders must "gather records, conduct necessary research, assess the petitioner's eligibility, and prepare and file the petition. The PD's office must comply with PC § 290.5(a)(2) and serve copies of the petition on the superior or juvenile court, the registering agency, and the DA's office."[70]

---

[67] Exhibit X (5), Commission on State Mandates, Decision on *Sex Offenders: Disclosure by Law Enforcement Officers*, 97-TC-15, adopted on August 23, 2001, pages 9-25, https://csm.ca.gov/decisions/sod502.pdf (accessed on January 31, 2023).

[68] Statutes 2004, chapter 316, section 3(a); Exhibit X (6), Commission on State Mandates, Decision on *Reconsideration of Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law),* 04-RL-9715-06, adopted September 27, 2005, https://csm.ca.gov/decisions/doc87.pdf (accessed February 28, 2023).

[69] Exhibit X (7), Commission on State Mandates, Decision on *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO),* 08-TC-03, adopted January 24, 2014, https://csm.ca.gov/decisions/SARATSO_SODadopt012414.pdf (accessed on February 28, 2023).

[70] Exhibit A, Test Claim, filed June 29, 2022, page 14.

The claimant alleges that to comply with the requirements of section 290.5(a)(2), the Los Angeles County Sheriff Department (LASD) "must thoroughly review each petition, which includes conducting local and national records checks to identify criminal convictions, post-conviction time spent in custody, and calculate convictions and time served pursuant to PC § 290."[71]

The claimant alleges that to prepare for being served petitions under section 290.5(a)(2), the district attorney's office "created a system accommodation in their Prosecutorial Information Management System (PIMS) in order to handle petitions. Additionally, the DA created an Excel spreadsheet and a shared drive capable of tracking petitions. Further, the petition and all accompanying documents must be scanned and entered into PIMS."[72] The claimant further asserts that, to determine whether to exercise the authority granted to district attorneys under section 290.5(a)(2) to request a hearing on a petition, the district attorneys "must retrieve court records (local and out of county) and review case documents and risk assessment tools to determine whether the petitioner is eligible and appropriate for removal from the registry in relation to public safety. The DA must submit a California Judicial Council Form to the court and defense counsel."[73]

For section 290.5(a)(3), the claimant alleges:

> PC § 290.5(a)(3) states that any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties, which is reliable, material, and relevant. As a result of this new hearing process, the DA and PD must collect affidavits, declarations, police reports, and any other relevant evidence for consideration by the court. A petitioner must be represented at this hearing by an attorney who understands the law, court process, and rules of evidence.

Regarding the activities of public defenders, the claimant does not cite any provision of the test claim statute that specifically says public defenders must perform an action, and acknowledges that "once a PD client is sentenced, the PD's duties cease with respect to that client except in limited circumstances," giving civil commitment hearings under the Sexually Violent Predator Act as an example of one such limited circumstance.[74] The claimant does not address why it believes there is an exception to the rule here, except to assert without citation that "The legislatively created post-conviction process in Penal Code section 290.5 would violate due process if a lawyer were not provided in this legal, evidentiary, and adversarial proceeding."[75]

The claimant alleges it has incurred increased costs of $316,299 in the 2021-2022 fiscal year to comply with the test claim statute.[76] Specifically, it alleges $27,407 in increased costs from the

---

[71] Exhibit A, Test Claim, filed June 29, 2022, page 14.

[72] Exhibit A, Test Claim, filed June 29, 2022, page 15.

[73] Exhibit A, Test Claim, filed June 29, 2022, page 15.

[74] Exhibit A, Test Claim, filed June 29, 2022, page 14.

[75] Exhibit A, Test Claim, filed June 29, 2022, page 34.

[76] Exhibit A, Test Claim, filed June 29, 2022, page 17.

Los Angeles County Sheriff's Department associated with receiving and reviewing petitions under section 290.5, $198,835 in increased costs incurred by the District Attorney's Office for reviewing and processing petitions, and $90,057 in increased costs incurred by the Public Defender's Office associated with training on section 290.5 and filing petitions.[77]

The claimant estimates it will incur $610,693 in increased costs in the 2022-2023 fiscal year for complying with the requirements of section 290.5,[78] and estimates annual statewide costs of $4,506,187.[79]

The claimant asserts that Government Code section 17556(g) does not apply to this test claim because both the U.S. and California Supreme Courts have found that requiring a person to register as a sex offender is not a punishment for the offense, but is instead considered civil, nonpunitive, and regulatory in nature.[80] Because the sex offender registry is not considered a punishment, the test claim statute did not change the penalty for a crime. The claimant therefore requests that the Commission reject Finance's conclusion that the test claim be denied on the grounds of Government Code section 17556(g).

B. Department of Finance

Finance asserts that any costs incurred by the claimant are not state-reimbursable pursuant to Government Code section 17556(g), which states the Commission shall not find reimbursable costs mandated by the state when "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."[81] Finance believes this section applies because the test claim statute, "made changes to the statutes governing the penalties for persons convicted of specified sex offenses. Prior to the enactment of SB 384, Penal Code (PC) Section 290 required that persons convicted of specified sex offenses register with the police department or the sheriff's department in whose jurisdiction they resided, and that this registration be maintained for the rest of their life or until they moved from California."[82] Finance reasons that the lifetime registration requirement was one of the penalties for committing a registerable offense, because the intent of the sex offender registry was

---

[77] Exhibit A, Test Claim, filed June 29, 2022, page 25, (Declaration of Daniel Stanley); page 31, (Declaration of Tony Sereno); page 45, (Declaration of Sung Lee).

[78] Exhibit A, Test Claim, filed June 29, 2022, page 17.

[79] Exhibit A, Test Claim, filed June 29, 2022, page 17; page 25, (Declaration of Daniel Stanley); page 31, (Declaration of Tony Sereno); page 45, (Declaration of Sung Lee).

[80] Exhibit C, Claimant's Rebuttal Comments, filed January 30, 2023, page 2; citing *Smith v. Doe* (2003) 538 U.S. 84, 85-87, which found that the Alaska State Legislature intended to enact a civil program, and that registration of sex offenders was not a punishment for the crime.; and *In re Alva* (2004) 33 Cal.4th 254, 262, which found as follows: "[W]e conclude that California's law requiring the mere *registration* of convicted sex offenders is not a punitive measure subject to either state or federal proscriptions against punishment that is "cruel" and/or "unusual."

[81] Government Code section 17556(g).

[82] Exhibit B, Finance's Comments on the Test Claim, filed January 6, 2023, page 1.

> to prevent the offenders from recommitting the same or similar offenses by making their presence known to law enforcement and to the broader community. The preventative effect of this penalty is enhanced by PC Section 290.46, which requires the California Department of Justice to make available on a public internet website specified identifying information, including the name, photograph, and address or community of residence and Zip Code, of sex offenders required to register pursuant to PC Section 290. That the registration requirement is a penalty for the triggering offenses is substantiated by the fact that the registration requirement only applies to a person who committed those offenses.[83]

Finance concluded that the changes made to the sex offender registry system by the test claim statute change the penalty for a crime or infraction, and that the changes made relate directly to enforcing the crime or infraction. Finance concluded that Government Code 17556(g) therefore requires the Commission to deny the test claim in its entirety.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service…

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[84] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[85]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[86]
2. The mandated activity constitutes a "program" that either:
   a. Carries out the governmental function of providing a service to the public; or
   b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[87]

---

[83] Exhibit B, Finance's Comments on the Test Claim, filed January 6, 2023, page 1.

[84] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[85] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[86] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[87] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[88]

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[89]

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[90] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[91] In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[92]

A. The Test Claim Was Timely Filed.

Government Code section 17551(c) states that test claims "shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Section 1183.1(c) of the Commission's regulations defines 12 months as 365 days.[93]

Here, the test claim statute went into effect on January 1, 2018, but to give the Department of Justice lead-up time to prepare the new system and sort existing registered sex offenders into the three new tiers, the statutes did not become operative until three years later.[94] Penal Code section 290.5, as amended by the test claim statute, became operative on July 1, 2021.[95] This was the earliest date that a sex offender could petition to terminate their duty to register pursuant to the test claim statute, and that is the earliest date that claimant alleges it incurred costs. The

[88] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

[89] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[90] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

[91] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[92] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

[93] California Code of Regulations, title 2, section 1183.1(c).

[94] Statutes 2017, chapter 541.

[95] Statutes 2017, chapter 541, section 12.

claimant filed the Test Claim on June 29, 2022, within 365 days of the test claim statute's operative date.[96] Thus, the Test Claim was timely filed within 12 months of first incurring costs.

B. The Test Claim Statute Imposes State-Mandated Activities on County Law Enforcement Agencies and District Attorneys, but Not on Public Defenders.

1. Penal Code section 290.5, as amended by Statutes 2017, chapter 541, imposes state-mandated activities on law enforcement agencies and district attorneys.

To be reimbursable under article XIII B, section 6 of the California Constitution, the requirements must be mandated by the state; or ordered, commanded, or legally compelled by state law.[97] "Legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey."[98] Generally, a requirement is not mandated by the state if it is triggered by a local voluntary decision.[99] However, the courts have recognized the possibility that a state-mandated program may exist when that decision is not truly voluntary, i.e., when local government is compelled as a practical matter to perform the requirements.[100]

The activities required of law enforcement agencies by the test claim statute are mandated by the state. After being served a petition to terminate a duty to register, the registering law enforcement agency and the law enforcement agency of the county of conviction of a registerable offense if different than the county where the petition is filed "shall, within 60 days of receipt of the petition, report to the district attorney and the superior or juvenile court in which the petition is filed regarding whether the person has met the requirements for termination pursuant to subdivision (e) of Section 290."[101] As indicated above, Penal Code section 290(e) defines the minimum time period for the completion of the required registration period, and ways that the registration period can be extended or restarted. If the registering law enforcement agency identifies a conviction that was not previously assessed by the Department of Justice, but which requires registration pursuant to the requirements of Penal Code section 290.005 regarding out-of-state, federal, or military court convictions, the registering law enforcement agency "shall" refer that conviction to the Department of Justice for assessment and determination of

---

[96] Exhibit A, Test Claim, filed June 29, 2022, page 1.

[97] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 741.

[98] *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

[99] *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; see e.g. *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 107; see also *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

[100] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 744, 754. This form of compulsion is also referred to as "nonlegal compulsion." (See e.g. *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800, 821-822.)

[101] Penal Code section 290.5(a)(2).

whether the conviction changes the tier designation assigned by the Department to the offender.[102] If the Department of Justice needs more time to obtain the documents to make the assessment, the Department of Justice is required notify the registering law enforcement agency of the reason that an extension of time is necessary to complete the tier designation. The registering law enforcement agency "shall" then report to the district attorney and the court that the Department of Justice has requested an extension of time to determine the person's tier designation based on the newly discovered offense, the reason for the request, and the estimated time needed to complete the tier designation.[103] Based on the plain language of the test claim statute, these activities are mandated by the state.

The test claim statute imposes activities on district attorneys which are mandated by the state. Within 60 days of receiving reports from the law enforcement agencies or the district attorney of the county of conviction of the registerable offense, the registering county's district attorney "may" request the court hold a hearing on the petition if the petitioner has not fulfilled the requirements described in Penal Code section 290(e) to meet their mandatory minimum registration period, or if community safety would be significantly enhanced by the petitioner's continued registration.[104] If the district attorney requests a hearing, the district attorney "shall be entitled to present evidence" showing why community safety would be significantly enhanced by the petitioner's continued registration.[105] Penal Code section 290.5(a)(3) describes the evidence considered by the court:

> The court shall consider: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of the offense (known to the offender for less than 24 hours); criminal and relevant noncriminal behavior before and after conviction for the registerable offense; the time period during which the person has not reoffended; successful completion, if any, of a Sex Offender Management Board-certified sex offender treatment program; and the person's current risk of sexual or violent reoffense, including the person's risk levels on SARATSO static, dynamic, and violence risk assessment instruments, if available. Any judicial determination made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is reliable, material, and relevant.

Although the test claim statute phrases the district attorney's activities permissively with language like "may request a hearing" or "be entitled to present evidence," case law suggests that a local decision is not truly voluntary for the purposes of article XIII B, section 6 if it is, as a practical matter, constrained by duty. In *San Diego Unified School Dist.*, the California Supreme Court suggested that a local discretionary action should not be considered voluntary if, as a

[102] Penal Code section 290.5(a)(2).

[103] Penal Code section 290.5(a)(2).

[104] Penal Code section 290.5(a)(2).

[105] Penal Code section 290.5(a)(3).

practical matter, it must inevitably occur.[106] In that case, the Court was faced with statutory hearing requirements triggered by two types of school expulsions: "mandatory" expulsions, which state law required school principals to recommend whenever a student was found to be in possession of a firearm at school or at a school activity off school grounds, and "discretionary" expulsions, which state law granted school principals the authority to recommend for other conduct.[107] Although the Court confidently concluded that costs for the hearing requirements triggered by "mandatory" expulsions were reimbursable state mandated costs,[108] it hesitated to apply that same logic to deny reimbursement for the "discretionary" expulsions.[109] However, it cautioned in dicta that strictly denying reimbursement whenever a requirement was triggered by a technically discretionary local action may well contravene both the intent underlying article XIII B, section 6 and past holdings,[110] stating:

> Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra,* 190 Cal.App.3d 521, 234 Cal.Rptr. 795, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.,* at pp. 537–538, 234 Cal.Rptr. 795.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. *Yet, under a strict application of the rule gleaned from City of Merced, supra, 153 Cal.App.3d 777, 200 Cal.Rptr. 642,*

---

[106] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; see *Department of Finance v. Commission on State Mandates (POBRA*) (2009) 170 Cal.App.4th 1355, 1367-1368.

[107] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 869-870.

[108] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 881-882.

[109] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888.

[110] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888.

> *such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of City of Merced that might lead to such a result.*[111]

In *Department of Finance v. Commission on State Mandates* (*POBRA)*, the Third District Court of Appeal suggested that duty is the dividing line between truly voluntary and technically discretionary decisions.[112] In that case, the court was tasked with determining whether the Public Safety Officers Procedural Bill of Rights Act (POBRA), which granted procedural protections to state and local peace officers subject to investigation, interrogation, or discipline, imposed a reimbursable state mandated program on school districts and community college districts that employ peace officers.[113] The court held that because those protections were triggered by a local discretionary decision, that statute did not impose a reimbursable state mandated program on those districts.[114] However, the court also clarified that this discretionary decision was *not* the district's decision to investigate, interrogate, or discipline its peace officers, but rather the district's decision to employ peace officers in the first place.[115] It explained that since counties and cities had a basic and mandatory duty to provide policing services,[116] their administration of this duty, as a practical matter, necessarily included actions such as investigating, interrogating, or disciplining its peace officers. Thus, those actions and the downstream requirements imposed by the POBRA statutes could not reasonably be considered "truly voluntary" when performed by counties and cities.[117]

The same analysis applies here. It is a district attorney's duty as a public prosecutor to "attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses."[118] It would be a gross dereliction of a district attorney's duty

---

[111] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888, footnote omitted and emphasis added.

[112] *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[113] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1358.

[114] *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[115] *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[116] *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[117] See *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

[118] Govt. Code section 26500.

to the people of the state to elect not to appear in a serious felony case.[119] District attorneys have the ability to prosecute and defend civil actions only when specifically authorized by the Constitution or by statute.[120] A district attorney has the authority to participate in noncriminal actions or proceedings that are in aid of or auxiliary to the district attorney's usual duties.[121] A section 290.5 petition is civil litigation, not a criminal prosecution, but district attorneys are specifically required by statute to participate in this proceeding. The sex offender registry's purpose is to make law enforcement and the public aware of potentially dangerous individuals, so there is a strong public policy interest in requiring a sex offender's continued registration if there is reason to believe the petitioner still poses a potential threat to community safety. Therefore, if the district attorney determines that keeping a sex offender on the registry is in the interest of significantly enhancing community safety, it is not a discretionary action to exercise the authority granted by the test claim statute to request the court hold a hearing and to present evidence in the hearing.

Therefore, Penal Code section 290.5, as amended by the test claim statute, imposes state-mandated requirements on county law enforcement and district attorneys' offices.

2. The test claim statute does not impose any state-mandated requirements on county public defenders.

Unlike with law enforcement agencies or district attorneys however, the plain language of Penal Code section 290.5, as amended by the test claim statute, makes no mention of public defenders or petitioners having a right to counsel in the procedure to terminate a sex offender registration requirement. Nor do the other provisions of the Sex Offender Registration Act impose any requirements on public defenders. Looking at the test claim statute's legislative history, there was no discussion of public defenders representing petitioners that suggests intent that public defenders play a role in the petitioning process, or a general understanding that they would be inherently involved.[122]

Despite the test claim statute not specifically requiring anything of public defenders, the claimant asserts that "the legislatively created post-conviction process in Penal Code section 290.5 would violate due process if a lawyer were not provided in this legal, evidentiary, and adversarial proceeding."[123] The claimant cites no statutes or case law that supports this, except to note that there are some limited circumstances where a public defender's duties to their client continue to civil matters after sentencing, using civil commitment hearings under the Sexually Violent

---

[119] *People ex rel. Kottlneier v. Municipal Court* (1990) 220 Cal.App.3d 602, 609.

[120] *People v. Board of Parole Hearings* (2022) 83 Cal.App.5th 432, 444.

[121] *People v. Parmar* (2001) 86 Cal.App.4th 781, 798.

[122] Exhibit X (1) Senate Committee on Appropriations, Analysis of SB 421, as introduced April 17, 2017; Exhibit X (2) Assembly Committee on Public Safety, Analysis of SB 421, as amended May 26, 2017; Exhibit X (3) Senate Rules Committee, Office of Senate Floor Analysis, Third Reading Analysis of SB 384, as amended September 8, 2017; Exhibit X (4) Senate Rules Committee, Office of Senate Floor Analysis, Unfinished Business on SB 384, as amended September 8, 2017.

[123] Exhibit A, Test Claim, filed June 29, 2022, page 34 (Declaration of Debra Werbel, para. 12).

Predator Act as an example.[124] But the Sexually Violent Predator Act does specifically grant the right to counsel for civil commitment hearings.[125] Petitions for a certificate of rehabilitation also are granted a right to counsel.[126] There are no similar provisions in the test claim statute. The claimant also points to the fact that informational literature provided by the Department of Justice to registered sex offenders about the new tiered registration system directs them to seek assistance from public defenders as evidence of the public defenders' duty to represent petitioners.[127] Specifically, the Department of Justice said "The CA DOJ cannot provide legal assistance. If assistance is required, a registrant may contact a local public defender's office or a private attorney."[128] But that direction is not an executive order or legislative act that would create a reimbursable state mandate. Petitioning to terminate a duty to register as a sex offender is a post-conviction civil proceeding and petitioners do not have a constitutional right to representation.[129] The claimant fails to demonstrate how the test claim statute allegedly imposes activities on public defenders when the plain language of the test claim statute does not require public defender participation and the petitioners do not have a constitutional right to the effective assistance of counsel. Therefore the test claim statute does not impose any state-mandated activities on county public defenders.

C. The Mandated Activities Constitute a New Program or Higher Level of Service.

For the state-mandated activity to constitute a new program or higher level of service, it must be new when compared with the legal requirements in effect immediately before the enactment of the test claim statute and increase the level of service provided to the public.[130] In addition, the requirement must either carry out the governmental function of providing a service to the public, or impose unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.[131]

---

[124] Exhibit A, Test Claim, filed June 29, 2022, page 14.

[125] Welfare and Institutions Code Section 6602.

[126] Penal Code section 4852.08.

[127] Exhibit A, Test Claim, filed June 29, 2022, page 41 (Declaration of Debra Werbel, Exhibit A, California Department of Justice Frequently Asked Questions, page 6).

[128] Exhibit A, Test Claim, filed June 29, 2022, page 41 (Declaration of Debra Werbel, Exhibit A, California Department of Justice Frequently Asked Questions, page 6).

[129] There is no constitutional right to the effective assistance of counsel in state post-conviction proceedings. See *Pennsylvania v. Finley,* (1987) 481 U.S. 551, 555; *People v. Delgadillo,* (2022) 14 Cal.5th 216, 226.

[130] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[131] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *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.

1. The mandated activities are new in comparison to what was required under prior law.

The activities required of law enforcement agencies and district attorneys by the test claim statute are new in comparison to prior law, as under prior law the entire procedure of petitioning to be relieved of a duty to register after completing a mandatory minimum registration period did not exist. Under prior law, the only means of being relieved from the duty to register was through a certificate of rehabilitation.[132] The certificate of rehabilitation process has not been eliminated and is still available to eligible sex offenders who may wish to see their other rights restored, meaning petitioning to be terminated from the sex offender registry is a new process that exists alongside, rather than replaces the certificate of rehabilitation process.

Thus, the mandated activities are new when compared to prior law.

2. The mandated activities carry out the governmental function of providing a service to the public, and impose unique requirements on counties that do not apply generally to all residents and entities in the state.

The activities required of law enforcement agencies and district attorneys serve the functional purpose of ensuring that registration continues when appropriate for individual sex offenders with a high risk of re-offense.[133] This carries out a governmental function of protecting and enhancing community safety, and provides a service to the public. In addition, the requirements are uniquely imposed on county law enforcement and district attorneys.

Thus, the mandated activities impose a new program or higher level of service.

D. <u>There Are No Costs Mandated by the State Because the Test Claim Statute Falls Within the Government Code Section 17556(g) Exception for Statutes that "Eliminate a Crime or Infraction."</u>

The final element that must be met for reimbursement to be required under article XIII B, section 6 of the California Constitution is that the mandated activities must result in a local agency incurring increased costs mandated by the state within the meaning of Government Code section 17514. That section defines "costs mandated by the state" as "any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." Government Code section 17564 also provides that "[n]o claim shall be made pursuant to Sections 17551, . . ., nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, . . . , unless these claims exceed one thousand dollars ($1,000)." Even if the claims exceed $1,000, however, the claimed costs are not reimbursable if an exception identified in Government Code section 17556 applies.

---

[132] Former Penal Code section 290.5, as last amended by Statutes 2014, chapter 280.

[133] Exhibit X (3), Senate Rules Committee, Office of Senate Analysis, Third Reading Analysis of SB 384, as amended September 8, 2017, Page 13.

Here, there is substantial evidence that the claimant incurred over $1,000 in complying with the test claim statute, as required by Government Code section 17564.[134]

However, article XIII B, section 6 of the California Constitution does not require subvention for the enforcement or elimination of crime, or when the Legislature changes the penalty for a crime. Government Code section 17556(g) provides that the Commission "shall not find costs mandated by the state" when "the statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."[135]

Finance argued that this claim should be denied because of Government Code section 17556(g), but asserted that the test claim statute changed the penalty for a crime or infraction.[136] The claimant responded, and the Commission agrees, that the requirement to register as a sex offender is not historically considered a punishment by either the courts or the Legislature.[137] Rather, the requirement to register as a sex offender is considered non-punitive and civil in nature.[138] The stated legislative purpose behind the sex offender registry is to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection.[139] Courts have frequently found that the sex offender registry is not a punishment at least with respect to whether the registration requirement violates an individual's constitutional rights against ex post facto laws or cruel and unusual punishments.[140] Both its purpose and effect are considered regulatory in nature because section 290 is meant to make sex offenders "readily available for police surveillance at all times because the legislature deemed them likely to commit similar offenses in the future."[141] The obligation to register is not part of the sentence, instead "the obligation is a separate consequence of [a sex offense conviction] automatically imposed as a matter of law."[142] The burdens caused by requiring convicted sex offenders continuously register are incidental to a legitimate government regulatory purpose, and being a registered sex offender does not impose affirmative restrictions

---

[134] Exhibit A, Test Claim, filed June 29, 2022, page 17; page 25, (Declaration of Daniel Stanley); page 31, (Declaration of Tony Sereno); alleging increased costs in fiscal year 2021-2022 of $27,407 for the Los Angeles County Sheriff's Department and $198,835 for the Los Angeles County District Attorney's Office.

[135] Government Code section 17556(g).

[136] Exhibit B, Finance's Comments on the Test Claim, filed January 6, 2023, page 1-2.

[137] Exhibit C, Claimant's Rebuttal Comments, filed January 30, 2023, page 1; *People v. Castellanos* (1999) 21 Cal.4th 785, 796.

[138] *People v. Castellanos* (1999) 21 Cal.4th 785, 796; *In re Alva* (2004) 33 Cal.4th 254, 292; see generally *People v. Mosley* (2015) 60 Cal.4th 1044, 1054.

[139] *Wright vs. Superior Court* (1997) 15 Cal.4th 521, 526.

[140] *People v. Castellanos* (1999) 21 Cal.4th 785, 796; *In re Alva* (2004) 33 Cal.4th 254, 292; see generally *People v. Mosley* (2015) 60 Cal.4th 1044, 1054.

[141] *In re Alva* (2004) 33 Cal.4th 254, 264.

[142] *People v. Picklesimer* (2010) 48 Cal.4th 330, 338.

that have a punitive effect. Despite being triggered by a person's conviction for a sexual offense, the requirement to register as a sex offender is not itself a punishment. Therefore the test claim statute did not change the penalty for a crime or infraction.

Nevertheless, Government Code section 17556(g) still applies because the test claim statute eliminates a crime. The requirement to register as a sex offender is enforced by Penal Code section 290.018, which provides that a person who willfully violates any requirement under the Sex Offender Registration Act is guilty of a misdemeanor punishable by up to a year imprisonment if the original conviction that triggered the registration requirement was a misdemeanor, or guilty of a felony punishable by up to three years imprisonment if the original conviction was a felony.[143] Under prior law, the requirement to register annually and any time the offender moved existed for life.[144] But the test claim statute eliminates the requirement for a sex offender to register under the Act once the offender has successfully petitioned to terminate their duty to register, as early as 10 or 20 years after release. Although the test claim statute made no changes to the language in section 290.018 regarding the criminal penalties, it did amend section 290 to note that every person described in the section has a duty to register under the Act "*unless the duty to register is terminated pursuant to Section 290.5 . . . .*"[145] This means that once the duty to register is terminated, the offender is no longer subject to the requirements of the Sex Offender Registration Act, and any criminal penalties under Penal Code section 290.018 for failing to register or to otherwise comply for life are eliminated. Thus, the test claim statute has eliminated the crime within the meaning of Government Code section 17556(g), and, therefore, there are no costs mandated by the state.

Although the Commission's past decisions on prior test claims are not precedential, this interpretation is consistent with the Commission's prior decisions regarding the "eliminate a crime or infraction" language in Gov. Code section 17556(g). In *Accomplice Liability for Felony Murder,* 19-TC-02, the claimant sought reimbursement for costs associated with statutes that changed the felony murder rule and natural and probable causes doctrine to require either an intent to kill or that the defendant was a major participant in a crime who acted with reckless indifference towards human life, and allowed people convicted for murder under the felony murder rule or natural and probable causes doctrine prior to the change in law to petition to have their murder conviction vacated if they lacked the requisite state of mind.[146] Local agency interested parties argued this did not eliminate a crime because the test claim statute did not eliminate felony murder or murder under the natural and probable causes doctrine as crimes as a whole; the test claim statute only changed the element of malice required to find a person liable

---

[143] Penal Code section 290.018(a), (b).

[144] Former Penal Code section 290(b), as last amended by Proposition 35, section 9, approved November 6, 2012; Penal Code section 290.012, as added by Statutes 2007, chapter 579, and last amended by Statutes 2016, chapter 772; and Penal Code section 290.015 as added by Statutes 2007, chapter 579, and last amended by Statutes 2016, chapter 772.

[145] Penal Code section 290(b), emphasis added.

[146] Exhibit X (8), Commission on State Mandates, Decision on *Accomplice Liability for Felony Murder,* 19-TC-02, adopted December 4, 2020, page 29, https://csm.ca.gov/decisions/19-tc-01-120920.pdf (accessed on January 31, 2023).

for the offenses.[147] The Commission was not convinced by this argument, noting that "The test claim statute and the court cases make it clear, however, that the crime of murder has been eliminated for those persons who lack intent to kill while committing other felonies, or who are not major participants acting with reckless indifference to human life, as they may no longer be found guilty of murder."[148] Similarly, even though the test claim statute does not stop failure to register from being a crime as a whole, the test claim statute here makes it clear that those who have successfully petitioned the courts under section 290.5 no longer have a duty to register as a sex offender. This means they can no longer be found guilty under section 290.018 for failing to register, and thus the test claim statute eliminates a crime with respect to the people who are granted petitions under section 290.5.

Additionally, *Sex Offenders: Disclosure by Law Enforcement Officers,* 97-TC-15 is another prior Commission Decision dealing with the sex offender registry.[149] In that case, the test claim statute expanded the list of registerable offenses. The claimants argued that adding additional crimes to the list of registerable offenses did not create a new crime or change the definition of any crime.[150] The Commission found this interpretation lacking, and explained that if a person convicted of any of the newly added offenses does not register as a sex offender, they are now guilty of a misdemeanor or felony, whereas prior to the test claim statute, they would not have been guilty of a crime.[151] Although the prior test claim deals in the creation of a new crime rather than the elimination of a crime, the same principle applies here. Under prior law, everyone who has been convicted of a registerable offense was guilty of a misdemeanor or felony if they do not register as a sex offender. But going from a system in which all registrants were expected to register for life to a tiered system that gives a clear path to be relieved of the duty to register eliminates a crime, because it is no longer a crime for a person to not register as a sex offender once they have successfully petitioned to have their registration requirement terminated.

---

[147] Exhibit X (8), Commission on State Mandates, Decision on *Accomplice Liability for Felony Murder,* 19-TC-02, adopted on December 4, 2020, page 29-30, https://csm.ca.gov/decisions/19-tc-01-120920.pdf (accessed on January 31, 2023).

[148] Exhibit X (8), Commission on State Mandates, Decision on *Accomplice Liability for Felony Murder,* 19-TC-02, adopted on December 4, 2020, page 31, https://csm.ca.gov/decisions/19-tc-01-120920.pdf (accessed on January 31, 2023).

[149] Exhibit X (5), Commission on State Mandates, Decision on *Sex Offenders: Disclosure by Law Enforcement Officers,* 97-TC-15, adopted on August 23, 2001, page 4-6, https://csm.ca.gov/decisions/sod502.pdf (accessed on January 31, 2023).

[150] Exhibit X (5), Commission on State Mandates, Decision on *Sex Offenders: Disclosure by Law Enforcement Officers,* 97-TC-15, adopted on August 23, 2001, page 6, https://csm.ca.gov/decisions/sod502.pdf (accessed on January 31, 2023).

[151] Exhibit X (5), Commission on State Mandates, Decision on *Sex Offenders: Disclosure by Law Enforcement Officers,* 97-TC-15, adopted on August 23, 2001, page 6, https://csm.ca.gov/decisions/sod502.pdf (accessed on January 31, 2023).

Accordingly, the Commission finds that the test claim statute does not result in costs mandated by the state.

V. Conclusion

Based on the foregoing analysis, the Commission denies this Test Claim and finds that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 17, 2023, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued March 17, 2023**

  Sex Offenders Registration: Petitions for Termination, 21-TC-03
  Statutes 2017, Chapter 541, Section 12 (SB 384), effective January 1, 2018, operative July 1, 2021
  County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 March 17, 2023 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/15/23

Claim Number: 21-TC-03

Matter: Sex Offenders Registration: Petitions for Termination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Anna Barich, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Anna.Barich@csm.ca.gov

Arlene Barrera, Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8302
abarrera@auditor.lacounty.gov

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Brian Cote, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8184
bcote@counties.org

Ted Doan, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Ted.Doan@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Amber Lozano, *Department of Justice*
Child Protection Program, Room H122, 4949 Boradway, Sacramento, CA 95820
Phone: (916) 227-3263
amber.lozano@doj.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Craig Osaki, Deputy in Charge, *Los Angeles County Public Defender's Office*
9425 Penfield Avenue #2700, Chatsworth, CA 91311
Phone: (213) 974-2811
cosaki@pubdef.lacounty.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130

Phone: (858) 259-1055
palkowitz@aplawoffices.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Alexandra Peace, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
alexandra.peace@csm.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Christina Snider, Senior Deputy County Counsel, *County of San Diego*
1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-6229
Christina.Snider@sdcounty.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*
Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820
Phone: (916) 227-5997
jeannine.willie@doj.ca.gov

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Helmholst Zinzer-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

Exhibit E

RECEIVED
May 08, 2023
Commission on State Mandates

OSCAR VALDEZ
INTERIM AUDITOR-CONTROLLER

ASSISTANT AUDITOR-CONTROLLERS

MAJIDA ADNAN
ROBERT G. CAMPBELL
CONNIE YEE

May 8, 2023

Via Drop Box

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

Dear Ms. Halsey:

RESPONSE TO THE COMMISSION ON STATE MANDATES' PROPOSED DRAFT DECISION ON THE COUNTY'S SEX OFFENDERS REGISTRATION: PETITIONS FOR TERMINATION TEST CLAIM

The County of Los Angeles ("Claimant") submits the attached Comments in response to the Commission on State Mandates' Proposed Draft Decision on our *Sex Offenders Registration: Petitions for Termination, 21-TC-03* Test Claim.

If you have any questions please call me, or your staff may contact Fernando Lemus at (213) 974-0324 or via e-mail at flemus@auditor.lacounty.gov.

Very truly yours,

Oscar Valdez
Interim Auditor-Controller

OV:CY:RA:RC:FL

Attachment

RESPONSE TO THE COMMISSION ON STATE MANDATES' DRAFT PROPOSED DECISION ON THE COUNTY'S SEX OFFENDERS REGISTRATION: PETITIONS FOR TERMINATION TEST CLAIM

I. Senate Bill 384 Did Not Eliminate A Crime and Therefore No Bar Exists to Reimbursement

Senate Bill (SB) 384 did not eliminate a crime and, therefore, Government Code (GC) § 17556(g) does not bar reimbursement.

In its Proposed Decision, the Commission on State Mandates (Commission) finds that although the test claim statute imposes State-mandated activities on county law enforcement agencies and the District Attorneys, the County of Los Angeles (County or Claimant) is exempt from reimbursement under GC § 17556(g) because the statute "eliminated a crime or infraction." The Commission relied on two decisions, *Accomplice Liability for Felony Murder,* 19-TC-02 and *Sex Offenders: Disclosure by Law Enforcement Officers,* 97-TC-15, as support for denying Claimant's test claim. The test claim *Sex Offenders: Disclosure by Law Enforcement Officers,* 97-TC-15, added crimes to the list of registerable offenses, which meant if a person convicted of these crimes failed to register, they would be guilty of a felony or misdemeanor.

SB 384 did not add or remove crimes. It created a process by which convicted sex offenders *may* petition the court to be removed from the sex offender registry. The District Attorney may oppose the petition and request a hearing, and the court ultimately decides whether the duty to register is terminated. Accordingly, SB 384 did not explicitly remove registration requirements from convicted sex offenders, but rather created a procedure for the courts and the District Attorney to consider whether factors warranted termination or continued registration. Conversely, in 97-TC-15, the Legislature affirmatively included additional crimes that warranted registration, which potentially triggered the crime of failure to register.

In *Accomplice Liability for Felony Murder,* 19-TC-02, the Commission held that a crime was eliminated because SB 1437 eliminated the felony murder rule and natural probable consequences doctrine from being utilized in murder convictions. Here, SB 384 did not eliminate the crime of failing to register. A sex offender may still be found guilty of the crime of failing to register. Further, SB 384 did not remove crimes from being considered registerable offenses. If the Legislature's intent was to remove crimes from being considered registerable offenses, it would have so stated. The duty to register is impacted only if a person files a petition and it is unopposed by the District Attorney and approved by the court. SB 384 does not automatically by operation of law remove offenses from registration requirements, unlike in 97-TC-15, which affirmatively added crimes, or 19-TC-02, which limited the felony murder rule and natural-and-probable-consequences doctrine from being used in murder cases.

GC § 17556 (g) states that costs are not mandated by the State if the statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime of infraction, *but only for that portion of the statute relating to the enforcement of the crime or infraction* (emphasis added). The latter portion to GC § 17556 (g) clearly demonstrates that the use of this exemption should not be broadly interpreted. In *CA School Board Association v. State of California*, 171 Cal.App. 4th 1183, 1215, the court noted that GC § 17556 (f), as it was formerly written, was too broad when it stated, "The statute or executive order imposes duties that are 'reasonably within the scope of' a ballot measure approved by the voters in a statewide or local election …" The court found that the "reasonably within the scope of" language was impermissibly broad and that it allowed for the denial of reimbursement when reimbursement is constitutionally required. Similarly, the Commission's application of GC § 17556 (g) is overbroad. SB 384 did not modify or amend Penal Code (PC) § 290.018 with regards to the enforcement of the crime of failure to register. It restates that all sex offenders shall register upon being discharged or paroled "unless the duty to register is terminated pursuant to Section 290.5." See PC § 290.018. The fact that SB 384 inserted this language in PC § 290.018 does not create a bar to reimbursement because SB 384 did not eliminate the crime of failure to register. SB 384 created a tiered registration process pursuant to PC § 290.5 and the insertion of this language in PC § 290.018 is collateral to the test claim statute and, therefore, the exemption should not apply.

II. SB 384 Imposes Duties on Public Defenders

Although there is no federal right to counsel in post-conviction matters, there are situations that trigger the due process clause under State law and require that counsel be appointed. For example, courts have held that "if a [habeas] petition attacking the validity of a judgment states a prima facie case leading to issuance of an order to show cause, the appointment of counsel is demanded by due process concerns." (*In re Clark* (1993) 5 Cal.4th 750, 780, 21 Cal.Rptr.2d 509, 855 P.2d 729.) When "an indigent petitioner has stated facts sufficient to satisfy the court that a hearing is required, his claim can no longer be treated as frivolous and he is entitled to have counsel appointed to represent him." (*Shipman*, at p. 232, 42 Cal.Rptr. 1, 397 P.2d 993; see also *People v. Fryhaat* (2019) 35 Cal.App.5th 969, 980-981, 248 Cal.Rptr.3d 39 [due process requires appointment of counsel when defendant establishes prima facie case for postconviction relief under PC § 1473.7]; *People v. Rouse* (2016) 245 Cal.App.4th 292, 299, 199 Cal.Rptr.3d 360 [due process right to counsel at a Proposition 47 resentencing hearing arose *after* the "[d]efendant passed the eligibility stage".)

Similarly, a petitioner under SB 384 must first comply with the sex offender registration time requirements, provide proof of current registration, and then serve the petition on the court, the prosecutor, and the relevant policing agencies (see PC § 290.5(a)(1) and (2).) Once the petitioner makes a prima facie showing that he is entitled to relief, the District Attorney still can request a hearing "on the petition if the petitioner has not fulfilled the requirement described in subdivision(e) of Section 290… or if community safety would be

significantly enhanced by the person's continued registration." "If no hearing is requested, the petition for termination shall be granted by the court." [PC § 290.5(a)(2)]

Petitioners who cannot afford counsel must be appointed counsel for these contested hearings in accordance with due process principles. At the hearing, a judge can consider the following: the nature and facts of the registerable offense; the age and number of victims; whether any victim was a stranger at the time of offense; criminal and non-criminal behavior before and after the conviction for the registerable offense; the time period during which the person has not reoffended; successful treatment of a sex offender treatment program and the person's risk of sexual or violent re-offense, including risk levels based on risk assessment tools; or any other evidence submitted by the parties, which is reliable, material and relevant.[1] These evidentiary factors to be considered by the court are presented by both the District Attorney and the petitioner. Permitting a petitioner who is not familiar with cross examination, subpoenaing witnesses or documents, hiring experts, and the rules of evidence would cause a breakdown in the process of meaningful adversarial testing that is central to our system of justice. Due process would be violated if counsel is not appointed in the adversarial process created by SB 384 that allows the District Attorney to present evidence. Therefore, since SB 384 created a process that compels the court to appoint counsel if a hearing takes place, the Public Defender costs should be reimbursable.

[1] Penal Code § 290.5(a)(3)

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

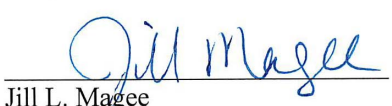
On May 8, 2023, I served the:

- **Claimant's Comments on the Draft Proposed Decision filed May 8, 2023**

  Sex Offenders Registration: Petitions for Termination, 21-TC-03
  Statutes 2017, Chapter 541, Section 12 (SB 384), effective January 1, 2018, operative July 1, 2021
  County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 May 8, 2023 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/5/23

Claim Number: 21-TC-03

Matter: Sex Offenders Registration: Petitions for Termination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, Division Chief, *County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Anna Barich, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Anna.Barich@csm.ca.gov

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Kris Cook, Assistant Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Kris.Cook@dof.ca.gov

Brian Cote, Senior Government Finance & Administration Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 650-8184
bcote@counties.org

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Kalyn Dean, Senior Legislative Analyst, *California State Association of Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
kdean@counties.org

Ted Doan, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Ted.Doan@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Diego Lopez, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Diego.Lopez@sen.ca.gov

Amber Lozano, *Department of Justice*
Child Protection Program, Room H122, 4949 Boradway, Sacramento, CA 95820
Phone: (916) 227-3263
amber.lozano@doj.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Craig Osaki, Deputy in Charge, *Los Angeles County Public Defender's Office*
9425 Penfield Avenue #2700, Chatsworth, CA 91311
Phone: (213) 974-2811
cosaki@pubdef.lacounty.gov

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130

Phone: (858) 259-1055
palkowitz@aplawoffices.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Cindy Sconce, Director, *MGT*
Performance Solutions Group, 3600 American River Drive, Suite 150, Sacramento, CA 95864
Phone: (916) 276-8807
csconce@mgtconsulting.com

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Oscar Valdez, Interim Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-0729
ovaldez@auditor.lacounty.gov

Antonio Velasco, Revenue Auditor, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3143
avelasco@newportbeachca.gov

Ada Waelder, Legislative Analyst, Government Finance and Administration, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
awaelder@counties.org

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jeannine Willie, *California Department of Justice (D-01)*
Missing Persons DNA Program, 4949 Broadway, Room A132, Sacramento, CA 95820
Phone: (916) 227-5997
jeannine.willie@doj.ca.gov

Colleen Winchester, Senior Deputy City Attorney, *City of San Jose*
200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
Colleen.Winchester@sanjoseca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Helmholst Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov

SENATE COMMITTEE ON APPROPRIATIONS
Senator Ricardo Lara, Chair
2017 - 2018 Regular Session

Exhibit F

SB 421 (Wiener) - Sex offenders: registration: criminal offender record information systems

Version: April 17, 2017
Urgency: No
Hearing Date: May 15, 2017

Policy Vote: PUB. S. 6 - 1
Mandate: No
Consultant: Shaun Naidu

This bill meets the criteria for referral to the Suspense File.

Bill Summary: SB 421 would reform the sex offender registry system to a tiered system.

Fiscal Impact:

- Department of Justice (DOJ): Major one-time costs, in the range of $10 million (General Fund) over a three-year period, for major IT changes to existing data bases, as well as automated and manual record review. Significant ongoing costs, in the range of $1 million (General Fund).

- Local law enforcement: Minor to moderate cost savings, potentially in the tens of thousands of dollars (local funds) to local law enforcement agencies completing monthly and annual paperwork for less people as people in tier one and tier two would be eligible to be removed from the registry.

- State incarceration: Potential unknown out-year savings (General Fund) in the realignment from state prison to county jail of any person who was on the registry but is removed and later is convicted for committing a realigned felony offense. If one person who would have served time in state prison because of the lifetime registry serves the sentence at the local level, the state would save over $75,000 annually in detention costs.

Background: Existing law requires persons convicted of specified sex offenses and certain acts of human trafficking for purposes of committing various sex offenses or extortion, as specified, or attempts to commit those offenses, to register with local law enforcement agencies while residing, attending school, or working in the state. The willful failure to register, as required, is a misdemeanor, or a felony, depending on the underlying offense. The Department of Justice is required to make available to the public information concerning registered sex offenders online, as specified. That information is to include, among other things, whether the offender was subsequently incarcerated for another felony. A person may apply to be excluded from the online posting, as specified.

Proposed Law: This bill would replace the existing lifetime sex offender registry system with a tiered registry system. Specific provisions of this bill would:

- Establish 3 tiers of registration based on specified criteria, for periods of at least 10 years, at least 20 years, and life, respectively, as specified.

- Establish procedures for termination from the sex offender registry for a registered sex offender who is in tier one or tier two and who completes his or her mandated minimum registration period under specified conditions.
- Require the person to file a petition at the expiration of his or her minimum registration period and would authorize the district attorney to request a hearing on the petition if the petitioner has not fulfilled the requirement of successful tier completion, as specified.
- Allow a person in tier three who meets specified criteria to petition the court for placement in tier two, as specified.
- Revise the criteria for exclusion from the website.
- Require state and local criminal offender record information systems to record sentence enhancement data elements.

Prior Legislation: AB 625 (Ammiano, 2012) would have established a tiered sex offender registry system. AB 625 failed passage on the Assembly Floor.

Staff Comments: According to the Los Angeles County District Attorney's Office:

> Based on a survey of several municipal law enforcement agencies in California, it is estimated that local law enforcement agencies spend between 60-66% of their resources dedicated for sex offender supervision on monthly or annual registration paperwork because of the large numbers of registered sex offenders on our registry. If we can remove low risk offenders from the registry it will free up law enforcement officers to monitor the high risk offenders living in our communities. Law enforcement cannot protect the community effectively when they are in the office doing monthly or annual paperwork for low risk offenders, when they could be out in the community monitoring high risk offenders.

In order for DOJ to determine in what tier to place people who are on the registry currently (and for newly-required individuals), the department would need to conduct a person-by-person case review to determine what offense or offenses the person has committed and how long ago the offense took place. If certain information is not available in the person's state summary criminal history information or other verified information readily accessible to DOJ, specifically if the dispositions of certain sex crime charges are not available, department staff would need to contact the court that adjudicated the case to obtain the disposition. This can be a labor- and time-intensive process, particularly given that there are over 100,000 individuals presently on the registry. Additionally, the department would need to make major changes to, and in some cases replace, existing IT systems to meet the requirements of this bill. This may require a certain amount of time to accomplish. Put together, it may take a not insignificant amount of time for DOJ to get a new sex offender registry system in operation. Consequently, the author may wish to examine whether the current dates in the bill impose a realistic timeframe to implement a new registry.

-- END --

Date of Hearing: July 11, 2017
Counsel: Cheryl Anderson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

SB 421 (Wiener) – As Amended May 26, 2017
As Proposed to be Amended in Committee

SUMMARY: Recasts the California sex offender registry scheme into a three-tiered registration system for periods of 10 years, 20 years or life, for a conviction in adult court of specified sex offenses, and five years, 10 years, and possibly life, for an adjudication as a ward of the juvenile court for specified sex offenses. Specifically, **this bill**:

1) Provides that a person required to register under the Sex Offender Registration Act (Act) for misdemeanors or non-violent, non-serious sex offense, is subject to registration under tier one. If convicted of the registerable offense in adult court, the person must register for a minimum of 10 years. If adjudicated for the registerable offense in juvenile court, the person must register for a minimum of five years.

2) Provides that a person required to register under the Act for a serious or violent or other specified felony sex offenses is subject to registration under tier two. If convicted of the registerable offense in adult court, the person must register for a minimum of 20 years. If adjudicated for the registerable offense in juvenile court, the person must register for a minimum of 10 years.

3) Provides that a person is subject to tier three registration – lifetime registration – if any of the following apply:

    a) The person was subsequently convicted of a violent registerable felony sex offense in a separate proceeding;

    b) The person was convicted of a violent felony, committed as a result of sexual compulsion or for purposes of sexual gratification, for which he or she was ordered to register;

    c) The person was committed to a state mental hospital as a sexually violent predator;

    d) The person was convicted of any of the following:

        i) murder while attempting to commit or committing a specified sex offense;

        ii) kidnapping with the intent to commit a specified sex offense;

        iii) assault with intent to commit a specified sex offense in the commission of a first degree burglary;

iv) aggravated sexual assault on a child;

v) lewd or lascivious acts on a child by force, violence, duress, menace, or fear;

vi) sex offense with a child 10 years of age or younger; or,

vii) any offense for which the person is sentenced to a life term under the habitual sex offender law.

e) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO) is well above average risk;

f) The person is a habitual sex offender;

g) The person was convicted of lewd or lascivious acts on a child in two separate proceedings brought and tried separately;

h) The person was sentenced to 15 to 25 years to life for an offense under the habitual sex offender law;

i) The person is required to register as a mentally disordered sex offender; or,

j) The person was convicted of specified felony human trafficking offenses.

4) Provides that out of state registrants, with an offense which is equivalent to a California registerable offense, will be placed in the corresponding tier to that offense. If there is no equivalent California offense, the person will be placed in tier two. Except that the person is subject to tier three registration if one of the following applies:

a) The person's risk level on the static risk assessment instrument is well above average;

b) The person was subsequently convicted in a separate proceeding of an offense substantially similar to a registerable offense which is also substantially similar to a specified violent offense, or is substantially similar to aggravated sexual assault of a child or a specified sex offense with a minor 10 years of age or younger; or,

c) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator.

5) States that the tier one and two registration time period commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The time period is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment.

6) States that the time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction.

7) States that if a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

8) Provides that a person ordered to register for an offense committed out of sexual compulsion or gratification, shall register as a tier one offender for a period of ten years unless the court states on the record reasons for requiring tier two or tier three registration.

9) Provides the list of factors that the court must consider in determining whether to require tier two or tier three registration for an offense committed out of sexual compulsion or gratification, including: nature of the registerable offense: age and number of victims; whether the victim was a stranger; criminal and relevant noncriminal behavior; whether the person has previously been arrested or convicted of a sexually motivated offense; and the person's current risk of sexual or violent re-offense, including the person's static, dynamic, and violence risk levels.

10) Provides that information disseminated regarding a registered sex offender for public safety should also include the person's current risk of sexual or violent re-offense, including but not limited to their static, dynamic, and violence risk levels.

11) Provides that on or before July 1, 2019, all tier three registrants, except for juvenile offenders, will be posted on a public Web site with full address. All tier two registrants, and those convicted of committing or attempting to commit annoying or molesting a minor, except for juvenile offenders, will be posted on the public Web site with the ZIP Code for the registered address displayed. If a tier two registrant successfully completes the first 10 years of the 20-year tier and has not been convicted of a registerable offense or a serious or violent offense during the tiering period, he or she may petition the Department of Justice (DOJ) for exclusion from the public Web site for the last 10 years of the tier. This does not relieve the person of his or her duty to register as a sex offender.

12) Retains the current ability for specified registrants who received probation for an offense against a family member to apply for exclusion from the Web site. The person must be assessed as average, below average risk or very low risk to reoffend in order to be excluded from the public Web site.

13) Provides that persons who were previously granted exclusion for offenses but will no longer qualify for exclusion shall receive 30 days notice from DOJ before being re-posted on the public Megan's Law Web site.

14) States that provided information about a person is also displayed on the DOJ Megan's Law Web site, a law enforcement entity, as specified, may make information concerning a specific registerable person available on a public Web site if it determines it is necessary to ensure public safety based upon the current risk posed by a specific offender, including his or her

risk of sexual or violent re-offense as indicated by static, dynamic, and violence risk levels.

15) Sets forth a procedure for a registrant who is either in tier one or tier two to petition to be removed from the sex offender registry following the expiration of his or her registration period, except that petitions filed in 2018 and 2019 shall not be filed until on or after the person's birthday following the expiration of the mandated minimum registration period.

16) Requires that a petition to be removed from tier one or tier two be served on law enforcement and the district attorney, as specified. The district attorney may request a hearing on the petition if the petitioner has not fulfilled the minimum mandated registration period, including tolling and/or extension periods, or if community safety would be significantly enhanced by the person's continued registration.

17) Provides that if no hearing is requested, the court shall grant the petition for termination if proof of current registration is presented, the registering agency reported the person has completed their required registration, there are no pending charges against the person which could extend the required registration period, and the person is not in custody or on parole, probation, or supervised release.

18) Provides that if a hearing is requested, the district attorney shall be entitled to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration. In determining whether to order continued registration, the court may consider: the nature of the registerable offense: age and number of victims; whether the victim was a stranger; criminal and relevant noncriminal behavior; length of time without re-offense; successful completion of a sex offender treatment program; and the person's current risk of sexual or violent re-offense, including the person's static, dynamic, and violence risk levels.

19) States that if the petition for termination is denied, the court shall set the time period after which the person can repetition for termination, which shall be between one and five years from the date of the denial, based on the facts presented at the hearing. The court shall state the reasons for its determination on the record.

20) Requires the court to notify the DOJ if a petition for termination from the registry is granted or denied.

21) Sets forth a procedure for a registrant who is either in tier two or tier three to petition to be removed from the sex offender registry before the expiration of his or her registration period.

22) Provides that a person who is tier two may petition the superior court for termination from the registry after 10 years from release from custody on the registerable offense if all of the following apply:

    a) The registerable offense involved no more than one victim 13 to 17 years of age, inclusive;

    b) The offender was under 21 years of age at the time of the offense;

c) The registerable offense is not a specified violent felony, except lewd or lascivious acts with a child under 14 years of age; and

d) The registerable offense is not a human trafficking offense.

23) Specifies that a person who is tier two may file a petition with the superior court for termination from the registry only if he or she has not been convicted of a new offense requiring sex offender registration or a specified violent felony since release from custody on the offense requiring registration and has registered for 10 years. If the petition is denied, the person may not repetition for at least one year.

24) Provides that a person required to register as tier three based solely on his or her risk assessment level may petition the court for termination from the registry after 20 years from release from custody on the registerable offense if the person has not been convicted of a new offense requiring sex offender registration or a specified violent offense since the person was released from custody on the offense requiring registration, and the person has registered for 20 years. However, a person required to register for a conviction of lewd or lascivious acts on a child or a specified serious offense who is a tier three based on his or her risk level, shall not be permitted to petition for removal from the registry. If the petition is denied, the person may not re-petition for termination for at least three years.

25) Provides that a tier three person who obtains early release on a conviction for which registration is required and for which he or she was sentenced to a life term may file a petition with the superior court for placement in tier two if the person has registered for 10 years and the person has not been convicted of a new offense requiring registration or a specified violent or serious offense. The tier two registration period shall commence on the date the court grants the petition. If the petition is denied, the person may not repetition for placement in tier two for at least one year.

26) Requires the court, in ruling on a petition for early termination of tier two or trier three registration, or a petition to be placed in tier two rather than tier three, to determine whether community safety would be significantly enhanced by requiring continued registration or continued placement in tier three, respectively. The court may consider the following factors: whether the victim was a stranger; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior; whether the offender has successfully completed a sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person's current risk of sexual or violent reoffense, including the person's static, dynamic, and violence risk levels, if known.

27) Provides that the DOJ will automatically clear the registry of offenders who would have been placed in tier one or two, but whose convictions or adjudications are 30 years or older, who have never reoffended and who has registered for at least 10 years. Within 12 months of receipt of the person's annual update of registration in 2018, the DOJ shall determine if the person is eligible for termination and notify an eligible person and the registering law enforcement agency.

28) Provides that the Sex Offender Management Board shall address any issues, concerns, and problems related to the community management of sex offenders, as opposed to only adult

sex offenders.

29) Deletes the existing process for eligible registrants to be relieved of the registration requirement via a certificate of rehabilitation.

EXISTING LAW:

1) Requires persons convicted of specified sex offenses, juveniles adjudicated for specified sex offenses and who were committed to the Division of Juvenile Justice, sexually violent predators, and mentally disordered sex offenders, to register for life, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. (Pen. Code, § 290 et seq.) States that the registration shall consist of all of the following:

   a) A statement signed in writing by the person, giving information as shall be required by the DOJ and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;

   b) Fingerprints and a current photograph taken by the registering official;

   c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;

   d) A list of all Internet identifiers actually used by the person, as specified;

   e) A written statement signed by the person acknowledging the requirement to register and update their information;

   f) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,

   g) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable. (Pen. Code, § 290.015, subd. (a).)

2) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Pen. Code, § 290.015, subd. (b).)

3) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life, as specified. (Pen. Code, § 290.011, subds. (a) to (d).)

4) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony, except as specified, if the offense requiring registration was a felony or if the person has a prior conviction or juvenile adjudication of failing to register. (Pen. Code, § 290.018, subs. (a) & (b).)

5) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register, with specified exceptions, shall be punishable in the state prison for 16 months, two or three years. (Pen. Code, § 290.018, subd. (a) & (b).)

6) States that if a person is a mentally disordered sex offender, has been found not guilty by reason of insanity of an offense for which registration is required, or has had a petition sustained in a juvenile adjudication for an offense for which registration is required but has been found not guilty by reason of insanity, failure to register is a misdemeanor and must be punished by up to one year in county jail. A subsequent violation is a felony punishable by a state prison term of 16 months, two or three years. (Pen. Code, 290.018, subd. (d).)

7) States that a person other than a sexually violent predator who is required to register as a transient and who willfully fails to update his or her registration every 30 days is guilty of a misdemeanor and must be punished by a county jail term of 30 days to six months. A violation may not be charged more often than once in any period of 90 days. (Pen. Code, § 290.018, subd. (g).)

8) Requires the DOJ to make information about registered sex offenders available to the public via an Internet Web site, as specified. (Penal Code § 290.46.) The DOJ is required to include on this Web site a registrant's name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, any other information that the DOJ deems relevant unless expressly excluded under the statute. (Pen. Code, § 490.46, subds. (b)(1) & (b)(2).) Requires the DOJ to include on its Internet Web site either the home address or zip code of residence of persons who are required to register as sex offenders based upon their registration offense (Penal Code § 290.46, subds. (b)(1), (b)(2), (d)(2) & (d)(2).)

9) Requires people who are registered sex offenders to disclose this status to the licensee of a community care facility before becoming a client of that facility. (Health and Safety Code § 1522.01.)

10)

11) Provides that before a person required to register as a sex offender is released to a long-term health care facility, the Department of Corrections and Rehabilitation, the Department of State Hospitals, or other official in charge of the place of confinement must notify the facility, in writing, that the person is being released to reside at the facility. (Health & Saf. Code, § 1312.)

12)

13) Provides that a person required to register as a sex offender must disclose that status when applying for or accepting a position, either as an employee or a volunteer, where the registrant would be working, directly and unaccompanied, with minors on more than an incidental and occasional basis or would have authority to supervise or discipline minor children. (Pen. Code, § 290.95, subd. (a).) This disclosure requirement applies also where the registrant would be working directly and in an accompanied setting with minor children, and the work would require him or her to touch the children on more than an incidental basis. (Pen. Code, § 290.95, subd. (b).)

14) Imposes specified restrictions on persons registered as sex offenders with respect to employment in certain areas, such as in education (Ed. Code, §§ 35021, 44345), community care facilities (Health & Saf. Code, § 1522), residential care facilities (Health & Saf. Code § 1568.09), residential care facilities for the elderly (Health & Saf. Code, § 1569.17), day care facilities (Health & Saf. Code, § 1596.871), engaging in the business of massage (Govt. Code, § 51032), physicians and surgeons (Bus. & and Prof. Code, § 2221), registered nurses (Bus. & Prof. Code, § 2760.1), and others.

15) Provides that "(n)otwithstanding any other law, an inmate who is released on parole for any violation of Section 288[1] or 288.5[2] whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any school including any public or private school including any or all of kindergarten and grades 1 to 12, inclusive." (Pen. Code, § 3003, subd. (g).)

16) Creates the Sex Offender Management board to address any issues, concerns and problems related to the community management of adult sex offenders. (Pen. Code, § 9000 et seq.)

17) Provides that a certificate of rehabilitation (Pen. Code, § 4852.01 et seq.) relieves a person who is not in custody, on parole, or on probation of any further duty of registration, where the conviction leading to the requirement is not for a specified offense. (Pen. Code, § 290.5, subd. (a)(1).) A person who has obtained a certificate of rehabilitation for a specified offense must obtain a full pardon before he or she is relieved of the duty to register. (Pen. Code, § 290.5, subd. (b)(1).) However, the requirement of a pardon does not apply to misdemeanor violations of annoying or molesting child. (Pen. Code, § 290.5, subd.(b)(2).) Also, the court may relieve a person of the registration requirement, without a pardon, if the petition for a certificate of rehabilitation was granted before 1998, the conviction was for violating lewd act with child or continuous sexual abuse of child, the person was granted probation, and the person has complied with registration requirements and not been convicted of a felony for 10 years before filing the petition. (Pen. Code, § 290.5, subd. (b)(3).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "SB 421 reforms California's sex offender registry so that it can actually be used to keep communities safe.

"Right now, we treat all sex offenders the same, regardless of the person's risk of reoffense. Whether you're a sexual predator or an 80-year-old gay man caught having sex in a park in 1958, you're treated the same: you're on that registry for life. The only other states that still use this draconian, outdated, ineffective, and unfair approach are Alabama, South Carolina, and Florida. In fact, federal law requires states to adopt a tiered registry system, and California [sic] in violation of that requirement.

---

[1] Penal Code § 288 pertains to lewd or lascivious acts on a child, as specified.

[2] Penal Code § 288.5 pertains to continuous sexual abuse of a child, as specified.

"This unfair system has led to California's registry being so bloated - more than 100,000 people - that law enforcement cannot effectively use it. When something terrible happens and law enforcement pulls the list of registered sex offenders to look at suspects, the list is often so large that it's useless. That's because it isn't based on risk of reoffense. The size of the registry also leads to law enforcement spending a huge amount of resources on paperwork for people who don't pose a risk to anyone.

"As a result, a broad coalition of law enforcement agencies - including district attorneys, police chiefs, and sheriffs - support SB 421, as does CalCASA, our state's advocacy organization for sexual assault survivors.

"In addition to undermining effective law enforcement, overbroad registration also has significant negative impacts on individuals, their families, and their communities. People required to register for life face lifetime barriers to stable housing, leading to higher rates of homelessness, drug addiction, and mental illness, and they face barriers to employment leading to greater rates of poverty. Family members, particularly children, are impacted by the stigma of having a loved one on the registry. By creating a path off for people who are rehabilitated, SB 421 will make our system fairer and more just.

"Our current global lifetime registry as particularly negative impacts on LGBT people, largely gay men, who were targeted by police for simply engaging in same-sex sexual contact when that conduct was criminalized. These gay men - who couldn't have sex at home and who thus did so in public, whether in a park or in a car - were cited for indecent exposure or a similar charge. They thus became lifetime registered sex offenders. In many cases, these arrests were due to anti-LGBT discrimination and police entrapment. It's unconscionable that these men, who are as old as 80 or 90 years old, are stuck on this broken registry.

"Other LGBT victims of this system include young men who have sex with other young men and find themselves registered as sex offenders for life. If an 18 year old gay man has sex with a 17 year old gay man, he must register for life. If an 18 year old straight man has sex with a 17 year old woman, he doesn't have to register. This bill would remove these people from the registry along with others in similar circumstances and put a new, efficient, risk-based system in place. That's why Equality California is also a sponsor of the bill. California urgently needs a new registration system that improves public safety by focusing attention and resources on high risk and violent sex offenders. SB 421 does what we should have done a long time ago: focus California's sex offender registry on risk of re-offense. The sociopaths will remain on the registry for life. Others will be able to petition to be removed from the registry after either 20 years or 10 years of registration. No one will automatically be removed. They'll have to petition the court, and law enforcement will have the opportunity to oppose the petition if they deem it appropriate.

"After decades of research, we now have a much better sense of who is at high risk of reoffending and who is not. The current registry doesn't account for this. SB 421 was developed by California's Sex Offender Management Board - chaired by Nancy O'Malley, the District Attorney of Alameda County - in consultation with law enforcement and victims' advocacy organizations, and reflects the best practices on how to effectively manage sex offenders to protect the public."

2) **The Sex Offender Registration Act**: California has required sex offender registration since 1947. The purpose for sex offender registration is to deter offenders from committing future crimes, provide law enforcement with an additional investigative tool, and increase public protection. (*Wright vs. Superior Court* (1997) 15 Cal.4th 521, 526; Alissa Pleau (2007) *Review of Selected 2007 California Legislation: Closing a Loophole in California's Sex Offender Registration Laws,* 38 McGeorge L. Rev. 276, 278.)

   In enacting the Sex Offender Registration Act in 2006 (P.C. 290 et seq.), the Legislature expressly declared its intent to establish a comprehensive and standardized system for regulating sex offenders. (9 Witkin Cal. Crim. Law, *supra*, § 136.) The Act includes a lifetime registration requirement for persons convicted of or adjudicated for specified sex offenses. (See Pen. Code, § 290 et seq.) It also created a "standardized, statewide system" and a "comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities." (*People v. Nguyen* (2014) 222 Cal.App.4th 1168, 1179.) These statutes regulate numerous aspects of a sex offender's life including restricting the places a sex offender may visit and the people with whom he or she may interact. (*Ibid*.)

3) **Tiered Registration**: "The California Sex Offender Management Board (CASOMB) was created to provide the Governor and the State Legislature as well as relevant state and local agencies with an assessment of current sex offender management practices and recommended areas of improvement." (Cal. Sex Offender Management Board, *Recommendations Report* (Jan. 2010) p. 5 <http://www.casomb.org/docs/CASOMB%20Report%20Jan%202010_Final%20Report.pdf> [as of July 1, 2017].)

   In a 2010 report, the CASOMB made several key recommendations, including as relevant here, that:

   > • California should concentrate state resources on more closely monitoring high and-moderate risk sex offenders. A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet; other factors that should determine duration of registration and Internet posting include whether the sex offense was violent, was against a child, involved sexual or violent recidivism, and whether the person was civilly committed as a sexually violent predator.
   >
   > • Law enforcement should allocate resources to enforce registration law, actively pursue violations, maximize resources and results by devoting more attention to higher-risk offenders.

   (*Recommendations Report, supra,* at p. 6.)

   At the time of the report, California had the largest number of registered sex offenders of any state in the United States. This large number was attributed "to the large overall population of the state, the length of time California ha[s] been registering sex offenders (since 1947, retroactive to 1944), the length of time that registration (lifetime) is required for all registrants, and the large number of offenses that require mandatory sex offender registration. (*Recommendations Report, supra,* at p. 50.)

The CASOMB noted that California is one of the few states that has lifetime registration for all sex offenders. "On the positive side, this allows the public to be aware of the majority of sex offenders living in their neighborhoods. On the negative side, the public and local law enforcement agencies have no way of differentiating between higher and lower risk sex offenders. In this one-size-fits-all system of registration, law enforcement cannot concentrate its scarce resources on close supervision of the more dangerous offenders or on those who are at higher risk of committing another sex crime." (*Recommendations Report, supra*, at p. 50.)

Specifically, the CASOMB recommended that:

> • Not all California sex offenders need to register for life in order to safeguard the public and so a risk-based system of differentiated registration requirements should be created[;]
>
> • Focusing resources on registering and monitoring moderate to high risk sex offenders makes a community safer than trying to monitor all offenders for life[;]
>
> • A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet. Other factors which should determine duration of registration and Internet posting include:
>
> Whether the sex offense was violent[;]
>
> Whether the sex offense was against a child[;]
>
> Whether the offender was convicted of a new sex offense or violent offense after the first sex offense conviction[; and,]
>
> Whether the person was civilly committed as a sexually violent predator[.]

(*Recommendations Report, supra*, at p. 51.) The CASOMB "recommended that California amend its law on duration of registration, which should depend on individual risk assessment, history of violent convictions, and sex offense recidivism[.]"

> The proposed changes to California law take into consideration the seriousness of the offender's criminal history, the empirically assessed risk level of the offender, and whether the offender is a recidivist or has violated California's sex offender registration law. Duration of registration would range from ten (10) years to lifetime (10/20/life). For purposes of the tiering scheme, Penal Code section 667.5 lists violent offenses, including violent sexual offenses….

(*Recommendations Report, supra*, at p. 56.)

In its 2014 report, the CASOMB noted there were nearly 100,000 registrants in California, as a result of California's "universal lifetime" registration for persons convicted of most sex offenses. "California is among only four states which require lifetime registration for every

convicted sex offender, no matter the nature of the crime or the level of risk for reoffending." (Cal. Sex Offender Management Board, *A Better Path to Community Safety – Sex Offender Registration in California, "Tiering Background Paper"* (2014) p. 3 <http://www.casomb.org/docs/Tiering%20Background%20Paper%20FINAL%20FINAL%204-2-14.pdf> [as of July 2, 2017].)

According to the CASOMB: "Effective policy must be based on the scientific evidence. Research on sex offender risk and recidivism now has created a body of evidence which offers little justification for continuing the current registration system since it does not effectively serve public safety interests. (*Tiering Background Paper, supra*, at p. 4.) The CASOMB also noted the unintended consequences of lifetime registration. "These consequences include serious obstacles to finding appropriate housing – or any housing; obstacles to finding employment; obstacles to developing positive support systems; obstacles to developing close relationships; and obstacles to reintegrating successfully into communities." (*Ibid*.)

In line with its 2010 report, the CAOMB's 2014 report proposed a new registration system that would take into account the following considerations:

> • A tiered system of registration should be introduced so that the length and level of registration matches the risk level of the offender.
>
> • In the future, all those convicted of a sex offense which currently requires registration would continue to be required to register. The list of registrable sex crimes would not change.
>
> • The duration of registration would be [sic] no longer be for life for each and every registrant, no matter what the type of crime or the risk level.
>
> • Only high risk offenders, such as kidnappers, sexually violent predators and selected high risk offenders would be required to register for life.
>
> • The Megan's Law web site would display specified higher risk offenders.
>
> • Local law enforcement would have the ability to notify the public about any registered sex offender posing a current risk to the public.

(*Tiering Background Paper, supra*, at p. 7.)

In January of 2011, the Assistant Director of the California Research Bureau (CRB) testified before this Committee after the CRB had examined: (a) registration requirements, (b) tiered registration, (d) the duration of registration, and (d) best practices and the overall cost-effectiveness of sex offender registration requirements. Specifically, as the Assistant Director testified, the CRB had also examined how other states have implemented registration requirements:

> In our more detailed review of sex offender registration practices in other states, we selected states bordering California (Arizona, Nevada, and Oregon) as well as states with large populations and/or similar demographic characteristics to

> California: Florida, New Jersey, New York, Pennsylvania and Texas. Of the states we reviewed, only one, Florida, requires lifetime registration for all sex offenders. The others have tiers for registration – meaning that the offenders register for ten, 15 or 20 years for first-time offenses, and face lifetime registration for more violent or repeat offenses.
>
> Some of the states do allow registrants to petition for removal from the list, generally after a period of not having committing any registrable offenses. In contrast, California requires lifetime registration for all offenses, and only allows people convicted of certain misdemeanor sex offenses to apply for relief via a certificate of rehabilitation with a trial court.

(<http://www.library.ca.gov/crb/docs/Testimony_to_Public_Safety_Comm.1.25.2011.pdf>[as of July 1, 2017].)

This bill creates a tiered registry in California. Those convicted of the registerable sex offense in an adult criminal court will be required to register for 10 years, 20 years, or for life depending on the severity of the offense. Juveniles adjudicated for the registerable offense in the juvenile court and committed to the Division of Juvenile Justice, or its equivalent, will be required to register for 5 years or 10 years for tiers one and two, respectively, depending on the offense.

As the bill is currently written, it is unclear the extent to which a juvenile adjudication can trigger tier three, lifetime registration. For example, to the extent the static risk assessment instrument for sex offenders (SARATSO) can be applied to juveniles, a juvenile offender appears to be subject to tier three registration if his or her risk level is well above average. Also, the juvenile court has jurisdiction over an offense committed while a person was under 18 years of age even though the person is 18 or older when charged. (Welf. & Inst. Code, § 603.) Even assuming the static risk assessment instrument for sex offenders currently only applies to adults, could it nonetheless be applied to a juvenile offender who has attained adulthood when charged? Further, a static risk assessment instrument tool that applies specifically to juveniles could be adopted. (Welf. & Inst. Code, § 290.04, subd. (f).) One could argue the other tier-three triggers apply to adult convictions, not juvenile adjudications. If the author wishes to exclude juvenile wards from being placed in tier three, he may wish to consider amending the bill's language to explicitly exclude juvenile offenders from tier three.

4) **Pathways Off the Tiered Registry**: Under SB 421, any registrant who would be a tier one or two tier offender whose only sex offense was prior to 1987, has not reoffended, and who has registered for at least 10 years and meets the requirements for termination, will be terminated by DOJ within 12 months of their annual update of registration in 2018.

   All other first or second tier registrants must petition for removal from the registry when they have completed their registration period. Registrants in violation of registration laws cannot petition for termination. Registrants who are in custody, facing pending charges which could extend or change the tier level, or who are on parole, probation or supervised release cannot petition for termination. The district attorney may request that the court set a hearing if the person does not meet the requirements for termination or if community safety would be significantly enhanced by continued registration. If no hearing is requested and the person meets the requirements for termination the court shall grant the petition unless community

safety would be enhanced by continued registration. If termination is denied, the court must set a time period, up to five years, in which the registrant can re-apply for termination. Courts must notify DOJ if a petition is granted or denied and, if denied, the time period after which the person can file a new petition for termination.

Additionally, tier two registrants whose only registerable offense involved voluntary conduct with a minor who was 13 to 17 years of age, when the offender was under the age of 21, may apply for termination after completing 10 years of the tier without having committed a new registerable offense or violent felony. The registerable offense must not have been a specified violent offense (except for lewd acts) or a human trafficking offense. The court must determine whether continued registration is necessary or whether termination is appropriate. Specified factors are suggested for the court's consideration.

A person required to register as a tier three offender based solely on his or her risk level may petition for termination after registering for 20 years if he or she has not been convicted of a new registerable or violent offense. However, a person required to register for a conviction of lewd or lascivious acts on a child or a specified serious sex offense who is a tier three based on his or her risk level, shall not be permitted to petition for removal from the registry. A tier three registrant who obtains early release from a life term may petition the court for placement in tier two after registering for 10 years if he or she has not been convicted of a new registerable or violent offense. The court must determine whether removal from the registry or placement in tier two, respectively is appropriate for community safety. Again, factors are suggested for the court to consider in this regard.

5) **National Guidelines:** The Sex Offender Registration and Notification Act (SORNA), which is title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), provides a comprehensive set of minimum standards for sex offender registration and notification in the United States. These guidelines are issued to provide guidance and assistance to covered jurisdictions, including the 50 states. (U.S. Dept. of Justice, *The National Guidelines for Sex Offender Registration and Notification, Proposed Guidelines* (May 2007) p. 3 <https://www.justice.gov/archive/tribal/docs/fv_tjs/session_3/session3_presentations/Sex_Offender_Guidelines.pdf> [as of July 2, 2017].) These guidelines include tiered registration. (*Id.* at pp. 24-27.)

"The use of the 'tier' classifications in SORNA relates to substance, not form or terminology. Thus, to implement the SORNA requirements, jurisdictions do not have to label their sex offenders as 'tier I,' 'tier II,' and 'tier III,' and do not have to adopt any other particular approach to labeling or categorization of sex offenders. Rather, the SORNA requirements are met so long as sex offenders who satisfy the SORNA criteria for placement in a particular tier are consistently subject to at least the duration of registration, frequency of in-person appearances for verification, and extent of website disclosure that SORNA requires for that tier." (*Proposed Guidelines* (May 2007) p. 24.)

Though California does not currently specifically tier its offenses, in 2016 it was found to be in substantial compliance with this section of SORNA. (U.S. Dept. of Justice, SORNA Substantial Implementation Review, State of California (Jan. 2016) p. 5 <https://www.smart.gov/pdfs/sorna/california-hny.pdf > [as of July 2, 2017].)

6) **Other Practical Considerations Regarding The Bill's Application To Juvenile Offenders:** The bill's current language is awkward as applied to juveniles. As currently, written, the bill incorporates juvenile wards, required to register pursuant to Penal Code section 290.008, under the adult provisions of Penal Code section 290. This may create unnecessary confusion given the differences between adult convictions and juvenile adjudications. For example, the list of sex offenses for which an adult must register is broader than the list of sex offenses for which a juvenile ward must register. The bill clarifies that a juvenile ward's duty to register is still governed by Penal Code section 290.008. But other questions remain because the bill, at times, uses adult court terminology without clarifying juvenile court terminology – e.g., does a person required to register based on a juvenile court adjudication file a petition for termination in the adult criminal court or the juvenile court? Ultimately, it may be more workable to remove the juvenile language from Penal Code section 290 (the adult provision) and include it under Penal Code section 290.008 (the juvenile provision) where remaining questions and concerns regarding juvenile tiered registration can be more clearly set forth.

7) **Argument in Support**: According to the *Los Angeles County District Attorney's Office*, a Co-sponsor of this bill, "While it sounds contradictory, California will greatly improve public safety by eliminating our current lifetime sex offender registration requirement and moving to a system where registered sex offenders are placed in a tiered system based on the severity of the offense. Law enforcement is spending too much of their finite sex offender supervision funding on paperwork of low risk offenders instead of focusing on managing and supervising high risk offenders that pose the greatest risk to public safety. Our Sex Offender Registry has become so large that it produces too many potential suspects when used to try and solve a sex crime case in many situations which limits its usefulness. However, by eliminating many of the low risk offenders from our registry both of these issues can be solved.

"Research shows lifetime registration and notification for low risk offenders can backfire by increasing their risk of reoffending. Registering offenders in tiers that are based on the person's individual record and risk of reoffending would allow law enforcement to concentrate their efforts on making sure high risk and violent offenders comply with the law.

"According to Dr. Karl Hanson, one of the leading experts in the study of recidivism of sex offenders, contrary to the popular notion that sexual offenders remain at risk of reoffending through their lifespan, research shows the longer a sex offender remains offense-free in the community, the less likely they are to re-offend sexually. After ten years a sex offender classified as low risk poses no more risk of recidivism than do individuals who have never been arrested for a sex-related offense but have been arrested for some other crime. After seventeen years without a new arrest for a sex-related offense, Dr. Hanson's research has found that even a sex offender classified as high-risk poses no more risk of committing a new sex offense than do individuals who have never been arrested for a sex-related offense but have been arrested for some other crime.

"Moving to a tiered sex offender registration system will help California better achieve everyone's intended goal of achieving enhanced community safety through our sex offender registration system by focusing our efforts and resources on the most dangerous offenders."

8) **Argument in Opposition**: According to a *private individual*, "The proposed bill will allow sexual offenders to submit a request to have their name removed from the registry on a

multiple tiered system. This is dangerous, reckless and a threat to public safety…. [¶]…[¶] Victims, survivors, and the public safety rely on our leaders to keep us safe from sex offenders. One way of doing this awesome challenge is by instituting a sex offender registry that has open access. The proposed SB 421 bill will greatly impact our society in a negative manner."

9) **Prior Legislation**:

a) AB 1640 (Jones-Sawyer), of the 2013-2014 Legislative Session, would have relieved specified non-forcible, statutory rape offenses from mandatory lifetime sex offender registration and left the decision as to whether the offender is required to register to the discretion of the sentencing judge. AB 1640 failed passage in the Assembly.

b) AB 702 (Ammiano), of the 2013-2014 Legislative Session, would have recast the lifetime sex offender registration system into a three-tiered registration system for sex offenders for periods of 10 years, 20 years, or life. AB 702 failed passage in the Assembly.

c) AB 625 (Ammiano), of the 2011-2012 Legislative Session, would have established a four-tiered registration system for sex offenders for periods of 10 years, 20 years, or life and additionally created an "inactive registration" tier for those individuals not otherwise registered. AB 625 failed passage in the Assembly.

REGISTERED SUPPORT / OPPOSITION:

Support

California Coalition Against Sexual Assault (Co-sponsor)
California Sex Offender Management Board (Co-sponsor)
Equality California (Co-sponsor)
Los Angeles County District Attorney's Office (Co-sponsor)
A New Way of Life Re-Entry Project
Alameda County Board of Supervisors
Alameda County District Attorney
Alliance for Community Transformations
Alliance for Constitutional Sex Offense Laws
American Civil Liberties Union of California
California Civil Liberties Advocacy
California Coalition on Sexual Offending
California Coalition Welfare Rights Organizations, Inc.
California District Attorneys Association
California Police Chiefs Association
California Public Defenders Association
California State Association of Counties
Coalition of California Welfare Rights Organizations
Courage Campaign
Criminal Justice Clinic of UC Irvine School of Law
East Bay Community Law Center
Friends Committee on Legislation of California
Housing and Economic Rights Advocates

Immigrant Legal Resource Center
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
League of California Cities
Legal Services for Prisoners with Children
Legal Services of Northern California
Life Support Alliance
Los Angeles County Sheriff's Department
National Employment Law Project
National Housing Law Project
R Street Institute
Reentry Council of the City and County of San Francisco
Returning Home Foundation
Root and Rebound
Rubicon Programs
Santa Cruz County Public Defender's Office
Sure Helpline Crisis Center
Transgender, Gender-Variant, Intersex Justice Project
Voices for Progress Education Fund
YWCA Greater Los Angeles

7 Private Individuals
7 Law Professors
1 Professor, School of Social Work

Opposition

10 Private Individuals

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

SENATE THIRD READING
SB 384 (Wiener and Anderson)
As Amended September 8, 2017
Majority vote

SENATE VOTE: (vote not relevant)

Committee	Votes	Ayes	Noes
Governmental Organization		(vote not relevant)	
Appropriations		(vote not relevant)	
Public Safety	5-2	Jones-Sawyer, Gonzalez Fletcher, Quirk, Rubio, Santiago	Lackey, Kiley

SUMMARY: Effective January 1, 2021, recasts the California sex offender registry into a three-tiered registration system for periods of 10 years, 20 years or life for a conviction in adult court of specified sex offenses, and five years or 10 years for an adjudication as a ward of the juvenile court for specified sex offenses. Specifically, **this bill**:

1) Provides specifically that a person required to register under the Sex Offender Registration Act (Act) for an adult court conviction is subject to lifetime registration (tier three), if any of the following apply:

    a) The person was subsequently convicted of a violent registerable felony sex offense in a separate proceeding;

    b) The person was convicted of a violent felony, committed as a result of sexual compulsion or for purposes of sexual gratification, for which he or she was ordered to register;

    c) The person was committed to a state mental hospital as a sexually violent predator;

    d) The person was convicted of any of the following:

        i) murder while attempting to commit or committing a specified sex offense;

        ii) kidnapping with the intent to commit a specified sex offense;

        iii) assault with intent to commit a specified sex offense or commission of the same act(s) in the course of a first degree burglary;

        iv) pimping a minor;

        v) pandering with a minor;

        vi) procurement of a child under age 16 for lewd or lascivious acts;

        vii) abduction of a minor for purposes of prostitution;

viii) aggravated sexual assault of a child;

ix) lewd or lascivious acts on a child under age 14 or by a caretaker upon a dependent person by force or violence, or lewd acts on a child 14 or 15 years of age by a person at least 10 years older than the child;

x) sending harmful matter to a child that depicts a minor(s) engaged in sexual conduct;

xi) contacting a minor with the intent to commit a specified sex offense other than sodomy, oral copulation, or sexual penetration with a person under age 18;

xii) contacting a minor with the intent to expose oneself or engage in lewd or lascivious behavior;

xiii) continuous sexual abuse of a child;

xiv) sex offense with a child 10 years of age or younger;

xv) solicitation of rape, sodomy, or oral copulation by force or violence, or solicitation of other specified sex offenses;

xvi) any offense for which the person is sentenced to a life term under the habitual sex offender law.

e) The person's risk level on the static risk assessment instrument for sex offenders (SARATSO) is well above average risk at the time of release into the community;

f) The person is a habitual sex offender;

g) The person was convicted of lewd or lascivious acts on a child under age 14 in two separate proceedings brought and tried separately;

h) The person was sentenced to 15 to 25 years to life for an offense under the habitual sex offender law;

i) The person is required to register as a mentally disordered sex offender;

j) The person was convicted of specified felony human trafficking offenses;

k) The person was convicted of felony sexual battery by restraint or while the victim was unconscious of the nature of the act;

l) The person was convicted of rape of a child, or by force or violence, or where the victim was prevented from resisting by an intoxicating or controlled substance, or where the victim was unconscious of the nature of the act;

m) The person was convicted of spousal rape by force or violence;

n) The person was convicted of rape in concert;

o) The person was convicted of contributing to the delinquency of a minor involving lewd or lascivious conduct;

p) The person was convicted of sodomy by force or violence, or in concert, or where the victim was unconscious of the nature of the act, or where the victim was prevented from resisting by an intoxicating or controlled substance;

q) The person was convicted of oral copulation upon by force or violence, or in concert, or where the victim is unconscious of the nature of the act, or where the victim was prevented from resisting by an intoxicating or controlled substance;

r) The person was convicted of an act of sexual penetration by force or violence, or where the victim is unconscious of the nature of the act, or where the victim is prevented from resisting by an intoxicating or controlled substance, or where with a child under age 14 and who was more than 10 years younger than the person;

s) The person was convicted of child pornography (other than misdemeanor possession of child pornography).

2) Provides that unless person is subject to registration under tier three as specified above, a person required to register under the Act for an adult court conviction of a serious or violent or other specified felony sex offense must register for a minimum of 20 years (tier two).

3) Provides that unless a person is subject to registration under tier two or tier three as specified above, a person required to register under the Act for an adult court conviction of a misdemeanor or non-violent, non-serious sex offense must register for a minimum of 10 years (tier one).

4) Includes provisions to address juvenile offenders, as follows:

a) A person required to register under the Act for a juvenile court adjudication of a non-serious, non-violent sex offense must register for a minimum of five years (tier one); and

b) A person required to register under the Act for a juvenile court adjudication of a serious or violent felony sex offense must register for a minimum of ten years (tier two).

5) Provides that out of state registrants, with an offense which is equivalent to a California registerable offense, will be placed in the corresponding tier to that offense. If there is no equivalent California offense, the person will be placed in tier two. Except that the person is subject to tier three registration if one of the following applies:

a) The person's risk level on the static risk assessment instrument is well above average at the time of release into the community;

b) The person was subsequently convicted in a separate proceeding of an offense substantially similar to a registerable offense which is also substantially similar to a specified violent offense, or is substantially similar to aggravated sexual assault of a child or a specified sex offense with a minor 10 years of age or younger; or,

c) The person has ever been committed to a state mental hospital or mental health facility in a proceeding substantially similar to civil commitment as a sexually violent predator.

6) Allows the Department of Justice (DOJ) to place a person required to register under the Act in a tier-to-be-determined category for up to 24 months if his or her appropriate tier designation cannot be immediately ascertained.

7) States that the tier one and two registration time period commences on the date of release from incarceration, placement, or commitment, including any related civil commitment on the registerable offense. The time period is tolled during any period of subsequent incarceration, placement, or commitment, including any subsequent civil commitment, except that arrests not resulting in conviction, adjudication, or revocation of probation shall not toll the required registration period.

8) States that the minimum time period shall be extended by one year for each misdemeanor conviction of failing to register under this act, and by three years for each felony conviction of failing to register under this act, without regard to the actual time served in custody for the conviction.

9) States that if a registrant is subsequently convicted of another offense requiring registration pursuant to the Act, a new minimum time period for the completion of the registration requirement for the applicable tier shall commence upon that person's release from incarceration, placement, or commitment, including any related civil commitment. If the subsequent conviction requiring registration pursuant to the Act occurs prior to an order to terminate the registrant from the registry after completion of a tier associated with the first conviction for a registerable offense, the applicable tier shall be the highest tier associated with the convictions.

10) Provides that a person ordered to register for an offense committed out of sexual compulsion or gratification, shall register as a tier one offender for a period of ten years unless the court states on the record reasons for requiring tier two or tier three registration.

11) Provides the list of factors that the court must consider in determining whether to require tier two or tier three registration for an offense committed out of sexual compulsion or gratification, including: nature of the registerable offense: age and number of victims; whether the victim was a stranger; criminal and relevant noncriminal behavior; whether the person has previously been arrested or convicted of a sexually motivated offense; and the person's current risk of sexual or violent re-offense, including the person's static, dynamic, and violence risk levels.

12) Provides that information disseminated by a law enforcement agency regarding a registered sex offender for public safety should also include the person's current risk of sexual or violent re-offense, including but not limited to their static, dynamic, and violence risk levels.

13) Provides that effective January 1, 2022, registrants of specified sex offenses under current law and tier three registrants, excluding juvenile offenders, will be posted on a public Web site with full address. All other tier two registrants and those convicted of committing or attempting to commit annoying or molesting a minor, excluding juvenile offenders, will be posted on the public Web site with the ZIP Code for the registered address displayed.

14) Provides that any registrant whose information is listed on the public Web site with the address displayed on January 1, 2022 may continue to be included on the Web site while the registrant is placed in a tier-to-be-determined category. Any registrant whose information is

listed on the public Web site with the ZIP Code displayed on January 1, 2022, may continue to be included on the Web site while the registrant is placed in a tier-to-be-determined category. Any registrant whose information is not included on the Web site on January 1, 2022, and who is placed in a tier-to-be-determined category may be posted on the Web site with ZIP Code displayed.

15) Deletes current provisions allowing people required to register under the Act for misdemeanor annoying or molesting a child, felony sexual battery by restraint, or specified child pornography offenses to petition for exclusion from the Web site.

16) Retains the current ability for specified registrants who received probation for an offense against a family member to apply for exclusion from the Web site.

17) Provides that persons who no longer qualify for exclusion shall receive 30 days notice from DOJ before being re-posted on the public Web site.

18) States that provided information about a person is also displayed on the DOJ Megan's Law Web site, a law enforcement entity, as specified, may make information concerning a specific registerable person available on a public Web site if it determines it is necessary to ensure public safety based upon the current risk posed by a specific offender, including his or her risk of sexual or violent re-offense as indicated by static, dynamic, and violence risk levels.

19) Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier one or tier two to petition to be removed from the sex offender registry following the expiration of his or her minimum registration period. A person required to register for an offense that was adjudicated in the juvenile court, may file the petition in juvenile court on or after his or her birthday following the expiration of the mandated minimum registration period.

20) Requires that a petition to be removed from tier one or tier two be served on law enforcement and the district attorney, as specified.

21) Provides DOJ with the authority to reclassify an offender whose tier was incorrectly designated due to an unassessed conviction from an out-of-state, federal, or military court.

22) States that the district attorney may request a hearing on the petition if the petitioner has not fulfilled the minimum mandated registration period, including tolling and/or extension periods, or if community safety would be significantly enhanced by the person's continued registration.

23) Provides that if no hearing is requested, the court shall grant the petition for termination if proof of current registration is presented, the registering agency reported the person has completed their required registration, there are no pending charges against the person which could extend the required registration period, and the person is not in custody or on parole, probation, or supervised release.

24) Provides that if a hearing is requested, the district attorney shall be entitled to present evidence regarding whether community safety would be significantly enhanced by requiring continued registration. In determining whether to order continued registration, the court shall consider: the nature and facts of the registerable offense: age and number of victims; whether the victim was a stranger; criminal and relevant noncriminal behavior; length of time

without re-offense; successful completion of a sex offender treatment program; and the person's current risk of sexual or violent re-offense, including the person's static, dynamic, and violence risk levels.

25) States that if the petition for termination is denied, the court shall set the time period after which the person can repetition for termination, which shall be between one and five years from the date of the denial, based on the facts presented at the hearing. The court shall state the reasons for its determination on the record.

26) Requires the court to notify the DOJ if a petition for termination from the registry is granted or denied.

27) Sets forth a procedure, effective July 1, 2021, for a registrant who is either in tier two or tier three to petition to be removed from the sex offender registry before the expiration of his or her registration period.

28) Provides that a person who is tier two may petition the superior court for termination from the registry after 10 years from release from custody on the registerable offense if all of the following apply:

    a) The registerable offense involved no more than one victim 14 to 17 years of age, inclusive;

    b) The offender was under 21 years of age at the time of the offense;

    c) The registerable offense is not a specified violent felony, except lewd or lascivious acts with a child under 14 years of age; and

    d) The registerable offense is not a human trafficking offense.

29) Specifies that a person who is tier two may file a petition with the superior court for termination from the registry only if he or she has not been convicted of a new offense requiring sex offender registration or a specified violent felony since release from custody on the offense requiring registration and has registered for 10 years. If the petition is denied, the person may not repetition for at least one year.

30) Provides that a person required to register as tier three based solely on his or her risk assessment level may petition the court for termination from the registry after 20 years from release from custody on the registerable offense if the person has not been convicted of a new offense requiring sex offender registration or a specified violent offense since the person was released from custody on the offense requiring registration, and the person has registered for 20 years. However, a person required to register for a conviction of lewd or lascivious acts on a child or a specified serious offense who is a tier three based on his or her risk level, shall not be permitted to petition for removal from the registry. If the petition is denied, the person may not re-petition for termination for at least three years.

31) Requires the court, in ruling on a petition for early termination of tier two or trier three registration, or a petition to be placed in tier two rather than tier three, to determine whether community safety would be significantly enhanced by requiring continued registration or continued placement in tier three, respectively. The court may consider the following

factors: whether the victim was a stranger; the nature of the registerable offense, including whether the offender took advantage of a position of trust; criminal and relevant noncriminal behavior; whether the offender has successfully completed a sex offender treatment program; whether the offender initiated a relationship for the purpose of facilitating the offense; and the person's current risk of sexual or violent reoffense, including the person's static, dynamic, and violence risk levels, if known.

32) Provides that the Sex Offender Management Board shall address any issues, concerns, and problems related to the community management of sex offenders, as opposed to only adult sex offenders.

33) Specifies that a certificate of rehabilitation issued on or after July 1, 2021, does not relieve a person of the obligation to register under the Act unless the person is granted relief under the petition process for removal from the registry.

EXISTING LAW:

1) Requires persons convicted of specified sex offenses, juveniles adjudicated for specified sex offenses and who were committed to the Division of Juvenile Justice, sexually violent predators, and mentally disordered sex offenders, to register for life, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following:

   a) A statement signed in writing by the person, giving information as shall be required by the DOJ and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;

   b) Fingerprints and a current photograph taken by the registering official;

   c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;

   d) A list of all Internet identifiers actually used by the person, as specified;

   e) A written statement signed by the person acknowledging the requirement to register and update their information;

   f) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,

   g) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable.

2) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ.

3) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life, as specified.

4) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony, except as specified, if the offense requiring registration was a felony or if the person has a prior conviction or juvenile adjudication of failing to register.

5) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register, with specified exceptions, shall be punishable in the state prison for 16 months, two or three years.

6) States that if a person is a mentally disordered sex offender, has been found not guilty by reason of insanity of an offense for which registration is required, or has had a petition sustained in a juvenile adjudication for an offense for which registration is required but has been found not guilty by reason of insanity, failure to register is a misdemeanor and must be punished by up to one year in county jail. A subsequent violation is a felony punishable by a state prison term of 16 months, two or three years.

7) States that a person other than a sexually violent predator who is required to register as a transient and who willfully fails to update his or her registration every 30 days is guilty of a misdemeanor and must be punished by a county jail term of 30 days to six months. A violation may not be charged more often than once in any period of 90 days.

8) Requires the DOJ to make information about registered sex offenders available to the public via an Internet Web site, as specified. The DOJ is required to include on this Web site a registrant's name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, any other information that the DOJ deems relevant unless expressly excluded under the statute. Requires the DOJ to include on its Internet Web site either the home address or zip code of residence of persons who are required to register as sex offenders based upon their registration offense

9) Requires people who are registered sex offenders to disclose this status to the licensee of a community care facility before becoming a client of that facility.

10) Provides that before a person required to register as a sex offender is released to a long-term health care facility, the Department of Corrections and Rehabilitation, the Department of State Hospitals, or other official in charge of the place of confinement must notify the facility, in writing, that the person is being released to reside at the facility.

11) Provides that a person required to register as a sex offender must disclose that status when applying for or accepting a position, either as an employee or a volunteer, where the registrant would be working, directly and unaccompanied, with minors on more than an incidental and occasional basis or would have authority to supervise or discipline minor children. This disclosure requirement applies also where the registrant would be working directly and in an accompanied setting with minor children, and the work would require him or her to touch the children on more than an incidental basis.

12) Imposes specified restrictions on persons registered as sex offenders with respect to employment in certain areas, such as in education, community care facilities, residential care facilities, residential care facilities for the elderly, day care facilities, engaging in the business of massage, physicians and surgeons, registered nurses, and others.

13) Provides that "(n)otwithstanding any other law, an inmate who is released on parole for any violation of Section 288[1] or 288.5[2] whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any school including any public or private school including any or all of kindergarten and grades 1 to 12, inclusive."

14) Creates the Sex Offender Management board to address any issues, concerns and problems related to the community management of adult sex offenders.

15) Provides that a certificate of rehabilitation relieves a person who is not in custody, on parole, or on probation of any further duty of registration, where the conviction leading to the requirement is not for a specified offense. A person who has obtained a certificate of rehabilitation for a specified offense must obtain a full pardon before he or she is relieved of the duty to register. However, the requirement of a pardon does not apply to misdemeanor violations of annoying or molesting child. Also, the court may relieve a person of the registration requirement, without a pardon, if the petition for a certificate of rehabilitation was granted before 1998, the conviction was for violating lewd act with child or continuous sexual abuse of child, the person was granted probation, and the person has complied with registration requirements and not been convicted of a felony for 10 years before filing the petition.

16) Requires persons convicted of specified sex offenses, juveniles adjudicated for specified sex offenses and who were committed to the Division of Juvenile Justice, sexually violent predators, and mentally disordered sex offenders, to register for life, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following:

    a) A statement signed in writing by the person, giving information as shall be required by the DOJ and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;

    b) Fingerprints and a current photograph taken by the registering official;

    c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;

    d) A list of all Internet identifiers actually used by the person, as specified;

    e) A written statement signed by the person acknowledging the requirement to register and update their information;

    f) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,

---

[1] Penal Code Section 288 pertains to lewd or lascivious acts on a child, as specified.

[2] Penal Code Section 288.5 pertains to continuous sexual abuse of a child, as specified.

g) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable.

17) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ.

18) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life, as specified.

19) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony, except as specified, if the offense requiring registration was a felony or if the person has a prior conviction or juvenile adjudication of failing to register.

20) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register, with specified exceptions, shall be punishable in the state prison for 16 months, two or three years.

21) States that if a person is a mentally disordered sex offender, has been found not guilty by reason of insanity of an offense for which registration is required, or has had a petition sustained in a juvenile adjudication for an offense for which registration is required but has been found not guilty by reason of insanity, failure to register is a misdemeanor and must be punished by up to one year in county jail. A subsequent violation is a felony punishable by a state prison term of 16 months, two or three years.

22) States that a person other than a sexually violent predator who is required to register as a transient and who willfully fails to update his or her registration every 30 days is guilty of a misdemeanor and must be punished by a county jail term of 30 days to six months. A violation may not be charged more often than once in any period of 90 days.

23) Requires the DOJ to make information about registered sex offenders available to the public via an Internet Web site, as specified. The DOJ is required to include on this Web site a registrant's name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, any other information that the DOJ deems relevant unless expressly excluded under the statute. Requires the DOJ to include on its Internet Web site either the home address or zip code of residence of persons who are required to register as sex offenders based upon their registration offense

24) Requires people who are registered sex offenders to disclose this status to the licensee of a community care facility before becoming a client of that facility.

25) Provides that before a person required to register as a sex offender is released to a long-term health care facility, the Department of Corrections and Rehabilitation, the Department of State Hospitals, or other official in charge of the place of confinement must notify the facility, in writing, that the person is being released to reside at the facility.

26) Provides that a person required to register as a sex offender must disclose that status when applying for or accepting a position, either as an employee or a volunteer, where the registrant would be working, directly and unaccompanied, with minors on more than an incidental and occasional basis or would have authority to supervise or discipline minor children. This disclosure requirement applies also where the registrant would be working directly and in an accompanied setting with minor children, and the work would require him or her to touch the children on more than an incidental basis.

27) Imposes specified restrictions on persons registered as sex offenders with respect to employment in certain areas, such as in education, community care facilities, residential care facilities, residential care facilities for the elderly, day care facilities, engaging in the business of massage, physicians and surgeons, registered nurses, and others.

28) Provides that "(n)otwithstanding any other law, an inmate who is released on parole for any violation of Section 288[3] or 288.5[4] whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any school including any public or private school including any or all of kindergarten and grades 1 to 12, inclusive."

29) Creates the Sex Offender Management board to address any issues, concerns and problems related to the community management of adult sex offenders.

30) Provides that a certificate of rehabilitation relieves a person who is not in custody, on parole, or on probation of any further duty of registration, where the conviction leading to the requirement is not for a specified offense. A person who has obtained a certificate of rehabilitation for a specified offense must obtain a full pardon before he or she is relieved of the duty to register. However, the requirement of a pardon does not apply to misdemeanor violations of annoying or molesting child. Also, the court may relieve a person of the registration requirement, without a pardon, if the petition for a certificate of rehabilitation was granted before 1998, the conviction was for violating lewd act with child or continuous sexual abuse of child, the person was granted probation, and the person has complied with registration requirements and not been convicted of a felony for 10 years before filing the petition.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

1) Significant ongoing cost in the tens of millions of dollars (General Fund (GF)) to the DOJ, including $10 – 15 million the first two years for one-time information technology costs to transition from lifetime-based sex offender registration to the new three-tier system and for processing the over 40,000 requests of individuals eligible to petition for termination. Ongoing costs include staff to process tiering, exclusions, and terminations, as well as outreach and coordination with law enforcement agencies. The costs to the DOJ for the first six years is estimated to exceed $60 million, including staff and information technology costs. There will be some unknown savings to DOJ by eliminating the current annual reporting requirement on qualifying sex offenders.

---

[3] Penal Code Section 288 pertains to lewd or lascivious acts on a child, as specified.

[4] Penal Code Section 288.5 pertains to continuous sexual abuse of a child, as specified.

2) Unknown cost pressures on the trial courts (Trial Court Trust Fund/GF) if termination requests are denied and/or challenged and a hearing is required. .

COMMENTS: According to the author, "[This bill] reforms California's sex offender registry so that it can actually be used to keep communities safe.

"Right now, we treat all sex offenders the same, regardless of the person's risk of reoffense. Whether you're a sexual predator or an 80-year-old gay man caught having sex in a park in 1958, you're treated the same: you're on that registry for life. The only other states that still use this draconian, outdated, ineffective, and unfair approach are Alabama, South Carolina, and Florida. In fact, federal law requires states to adopt a tiered registry system, and California [sic] in violation of that requirement.

"This unfair system has led to California's registry being so bloated - more than 100,000 people – that law enforcement cannot effectively use it. When something terrible happens and law enforcement pulls the list of registered sex offenders to look at suspects, the list is often so large that it's useless. That's because it isn't based on risk of reoffense. The size of the registry also leads to law enforcement spending a huge amount of resources on paperwork for people who don't pose a risk to anyone.

"As a result, a broad coalition of law enforcement agencies - including district attorneys, police chiefs, and sheriffs - support [this bill], as does CalCASA, our state's advocacy organization for sexual assault survivors.

"In addition to undermining effective law enforcement, overbroad registration also has significant negative impacts on individuals, their families, and their communities. People required to register for life face lifetime barriers to stable housing, leading to higher rates of homelessness, drug addiction, and mental illness, and they face barriers to employment leading to greater rates of poverty. Family members, particularly children, are impacted by the stigma of having a loved one on the registry. By creating a path off for people who are rehabilitated, [this bill] will make our system fairer and more just.

"Our current global lifetime registry as particularly negative impacts on LGBT people, largely gay men, who were targeted by police for simply engaging in same-sex sexual contact when that conduct was criminalized. These gay men - who couldn't have sex at home and who thus did so in public, whether in a park or in a car - were cited for indecent exposure or a similar charge. They thus became lifetime registered sex offenders. In many cases, these arrests were due to anti-LGBT discrimination and police entrapment. It's unconscionable that these men, who are as old as 80 or 90 years old, are stuck on this broken registry.

"Other LGBT victims of this system include young men who have sex with other young men and find themselves registered as sex offenders for life. If an 18 year old gay man has sex with a 17 year old gay man, he must register for life. If an 18 year old straight man has sex with a 17 year old woman, he doesn't have to register. This bill would remove these people from the registry along with others in similar circumstances and put a new, efficient, risk-based system in place. That's why Equality California is also a sponsor of the bill. California urgently needs a new registration system that improves public safety by focusing attention and resources on high risk and violent sex offenders. [This bill] does what we should have done a long time ago: focus California's sex offender registry on risk of re-offense. The sociopaths will remain on the registry for life. Others will be able to petition to be removed from the registry after either 20

years or 10 years of registration. No one will automatically be removed. They'll have to petition the court, and law enforcement will have the opportunity to oppose the petition if they deem it appropriate.

"After decades of research, we now have a much better sense of who is at high risk of reoffending and who is not. The current registry doesn't account for this. [This bill] was developed by California's Sex Offender Management Board - chaired by Nancy O'Malley, the District Attorney of Alameda County - in consultation with law enforcement and victims' advocacy organizations, and reflects the best practices on how to effectively manage sex offenders to protect the public."

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744 FN: 0002274

Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 384
Author: Wiener (D) and Anderson (R), et al.
Amended: 9/8/17
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

[**NOTE: This bill is nearly identical to SB 421 (Weiner, 2017), which passed the Senate Floor 27-9 on 5/31/17: SB 421 roll call:**

SENATE FLOOR VOTES ON SB 421: 27-9, 5/31/17
AYES: Allen, Anderson, Atkins, Beall, Bradford, De León, Dodd, Galgiani, Hernandez, Hertzberg, Hill, Hueso, Jackson, Leyva, McGuire, Mendoza, Mitchell, Monning, Moorlach, Pan, Roth, Skinner, Stern, Vidak, Wieckowski, Wiener, Wilk
NOES: Bates, Berryhill, Cannella, Fuller, Gaines, Glazer, Morrell, Newman, Nguyen, Nielsen, Stone
NO VOTE RECORDED: Lara, Portantino]

ASSEMBLY FLOOR: 42-22, 9/15/17
(ROLL CALL NOT AVAILABLE)

SUBJECT: Sex offenders: registration: criminal offender record information systems

SOURCE: CALCASA
Los Angeles District Attorney's Office
Sex Offender Management Board

DIGEST: This bill creates a tiered registry for sex offenses so that people will be required to register for 10 years, 20 years, or lifetime depending on the conviction offense.

Assembly Amendments delete the contents of the bill as it left the Senate and insert the contents of SB 421(Weiner) which passed the Senate 27-9 on May 31st. In

addition, the amendments to this bill slightly narrowed SB 421 by moving a number of offenses involving children or force from the 20-year registration requirement to the lifetime registration requirement.

ANALYSIS:

Existing law:

1) Requires persons convicted of specified sex offenses to register for life, or reregister if the person has been previously registered, upon release from incarceration, placement, commitment, or release on probation. States that the registration shall consist of all of the following:

   a) A statement signed in writing by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment, if different from the employer's main address;

   b) Fingerprints and a current photograph taken by the registering official;

   c) The license plate number of any vehicle owned by, regularly driven by or registered in the name of the registrant;

   d) Notice to the person that he or she may have a duty to register in any other state where he or she may relocate; and,

   e) Copies of adequate proof of residence, such as a California driver's license or identification card, recent rent or utility receipt or any other information that the registering official believes is reliable. (Penal Code Section 290.015(a))

2) States every person who is required to register, as specified, who is living as a transient shall be required to register for the rest of his or her life as specified. (Penal Code § 290.011(a) to (d).)

3) Provides that willful violation of any part of the registration requirements constitutes a misdemeanor if the offense requiring registration was a misdemeanor, and constitutes a felony of the offense requiring registration was a felony or if the person has a prior conviction of failing to register. (Penal Code § 290.018(a)(b).)

4) Provides that within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the DOJ. (Penal Code § 290.015(b).)

5) States that a misdemeanor failure to register shall be punishable by imprisonment in a county jail not exceeding one year, and a felony failure to register shall be punishable in the state prison for 16 months, 2 or 3 years. (Penal Code Section 290.018(a)(b).)

6) Requires DOJ to make information about registered sex offenders available to the public via an Internet Web site, as specified. (Penal Code § 290.46.) Requires people who are registered sex offender registrants to disclose this status to the licensee of a community care facility before becoming a client of that facility. (Health and Safety Code § 1522.01.)

7) Imposes specified restrictions on persons registered as sex offenders with respect to employment in certain areas.

8) Provides that the "Department of Corrections shall develop and, at the discretion of the director, and subject to an appropriation of the necessary funds, may implement a plan for the implementation of relapse prevention treatment programs, and the provision of other services deemed necessary by the department, in conjunction with intensive and specialized parole supervision, to reduce the recidivism of high-risk sex offenders." (Id.)

9) Provides that "(n)otwithstanding any other law, an inmate who is released on parole for any violation of Section 288or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one-quarter mile of any school including any public or private school including any or all of kindergarten and grades 1 to 8, inclusive." (Penal Code § 3003(g) (emphasis added).)

10) Creates the Sex Offender Management board to address any issue, concerns and problem related to the community management of adult sex offenders. (Penal Code § 9000 et seq)

This bill:

1) Creates three tiers of sex offender registration; a person will be required to register for 10 years, 20 years or life.

2) Provides that a person convicted of the specified misdemeanor and non-violent offenses shall be required to register for 10 years or 5 years if they were adjudicated as a juvenile.

3) Provides that a person convicted of more serious specified sex offenses, shall be required to register for 20 years or 10 years if they were adjudicated as a juvenile.

4) Provides that a person convicted of the most serious sex offenses shall be required to register for life.

5) Provides that out of state offenders, with an offense which is equivalent to a California registerable offense will be placed in the corresponding tier to that offense and if there is no equivalent California offense, the person will be placed in tier two (20 years.).

6) Provides that a person shall register as a tier one offender for a period of ten years unless the court states on the record reasons for requiring tier two or tier three registration.

7) Provides the list of factors that the court must consider in determining whether to require tier two or tier three registration including, age and number of victims; whether the victim was a stranger and whether the person has previously been arrested or convicted of a sexually motivated offense.

8) Provides that included in information disseminated to the public regarding a registered sex offender should also include the person's current risk of sexual or violent re-offense, including but not limited to their static dynamic violence risk levels on the SARATSO risk tools.

9) Provides that all tier three registrants will be posted on a public Web site with full address. All tier two registrants, except for juvenile offenders, will be posted on the public Web site with the ZIP Code for the registered address displayed. If a tier two registrant successfully completes the first 10 years of the 20-year tier and has not been convicted of a registerable offense or a serious or violent offense during the tiering period, he or she may petition the DOJ for exclusion from the public Web site for the last 10 years of the tier.

10) Retains the current ability for specified registrants who received probation for an offense against a specified family member to apply for exclusion for the

Web site. The person must be assessed as below average risk or very low risk to reoffend in order to be excluded from the public Web site.

11) Provides that persons who were previously granted exclusion for offenses but will no longer qualify for exclusion shall receive 30-days notice from DOJ before being re-posted on the public Megan's Law Web site.

12) Sets for a procedure for a registrant who is either in tier one or tier two to petition to be removed from the sex offender registry following the expiration of his or her tier.

13) Sets up a procedure for a tier three registrant to be removed from the requirement of registration after 20 years under specified circumstances.

14) Provides that it will automatically clear the registry of offenders who would have been placed in tier one or two, but whose convictions are 30 years or older, who have never reoffended and who has registered for at least 10 years.

Background

California is one of the few states that requires lifetime registration with no discernment for the type of offense. Florida, South Carolina and Alabama are the only other states without some form of tiering. While this allows the public to see a majority of offenders, the public and local law enforcement have no way of differentiating between higher and lower risk sex offenders.

Sex offender registry counts for some larger states as of March 31, 2016: California 84,315; Florida 68,845; Illinois 23,755; Michigan 38,753; New Jersey 15,645; New York 30,968; Ohio 17,683; Oregon 28,736; Pennsylvania 19,257; Texas 87,149; and, Virginia 22,299. (https://www.parentsformeganslaw.org /public/meganReportCard.html)

In a 2010 report, the California Sex Offender Management Board made the following recommendations regarding a tiered registration system in California: "Recommended Changes to California Law on Sex Offender Registration and Internet Notification. It's recommended that California amend its law on duration of registration, which should depend on individual risk assessment, history of violent convictions, and sex offense recidivism. The proposed changes to California law take into consideration the seriousness of the offender's criminal history, the empirically assessed risk level of the offender, and whether the

offender is a recidivist or has violated California's sex offender registration law. Duration of registration would range from ten (10) years to lifetime (10/20/life). For purposes of the tiering scheme." (<http://www.casomb.org/docs/CASOMB%20Report%20Jan%202010_Final%20Report. pdf .)

This bill creates a tiered registry in California. Sex offenders will be required to register for 10 years, 20 years, or for life or 5 or 10 years for juvenile offenders, depending on their offense.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee analysis of SB 421 (Weiner):

- DOJ: Major one-time costs, in the range of $10 million (General Fund) over a three-year period, for major IT changes to existing data bases, as well as automated and manual record review. Significant ongoing costs, in the range of $1 million (General Fund).

- Local law enforcement: Minor to moderate cost savings, potentially in the tens of thousands of dollars (local funds) to local law enforcement agencies completing monthly and annual paperwork for less people as people in tier one and tier two would be eligible to be removed from the registry.

- State incarceration: Potential unknown out-year savings (General Fund) in the realignment from state prison to county jail of any person who was on the registry but is removed and later is convicted for committing a realigned felony offense. If one person who would have served time in state prison because of the lifetime registry serves the sentence at the local level, the state would save over $75,000 annually in detention costs.

[NOTE: The following Support and Opposition list are based upon SB 421]

SUPPORT: (Verified 9/14/17)

CALCASA (co-source)
Los Angeles District Attorney's Office (co-source)
Sex Offender Management Board (co-source)
Alameda County District Attorney
Alameda County Board of Supervisors
Alliance for Constitutional Sex Offense Laws
American Civil Liberties Union of California
Asian American Drug Abuse Program, Inc.

Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California State Association of Counties
California Police Chiefs Association
California Narcotic Officers Association
California Public Defenders Association
California State Association of Counties
Courage Campaign
East Bay Community Law Center
Equality California
Family Safety Foundation
Friends Committee on Legislation of California
Legal Services for Prisoners with Children
Immigrant Legal Resource Center
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
National Employment Law Project
National Housing Law Project
Returning Home Foundation
Root & Rebound
Rubicon Programs
Voices for Progress Education Fund
Numerous individuals

OPPOSITION: (Verified 9/14/17)

None received

ARGUMENTS IN SUPPORT: According to the Los Angeles District Attorney's Office:

> Based on a survey of several municipal law enforcement agencies in California, it is estimated that local law enforcement agencies spend between 60-66% of their resources dedicated for sex offender supervision on monthly or annual registration paperwork because of the large numbers of registered sex offenders on our registry. If we can remove low risk offenders from the registry it will free up law enforcement officers to monitor the high risk offenders living in our communities. Law enforcement cannot protect the community effectively when

they are in the office doing monthly or annual paperwork for low risk offenders, when they could be out in the community monitoring high risk offenders.

Furthermore, the public is overwhelmed by the number of offenders displayed online in each neighborhood and do not know which offenders are considered low risk and which offenders are considered high risk and therefore truly dangerous.

In order to address these issues with California's Sex Offender Registry, [this bill] would abolish California's mandatory lifetime registration and replace it with a system in which registrants are placed into one of three tiers based on the seriousness of the underlying offense. The lowest tier, Tier One, would require the offender to register for a minimum of 10 years; Tier Two would require registration for a minimum of 20 years; and Tier Three would still require lifetime registration. Sexually Violent Predators (see Welf. & Inst. Code §§ 6600 et seq.) would also be required to register for life.

The tiers that would be created by [this bill] are based on seriousness of crime, risk of sexual reoffending, and criminal history. Tier One is comprised of registrants convicted of a misdemeanor or non-serious, non-violent felony (exception: all high risk offenders are Tier 3). Tier Two is comprised of registrants convicted of a serious or violent sex offense (exception: all high risk offenders are Tier 3). Tier Three is comprised of registrants ever found to be a sexually violent predator, habitual sexual offender, repeat violent offender, or if convicted of murder or kidnap with intent to commit a sexual offense, designated forcible sexual offenses, any sex offense requiring a life term, or two child molest convictions brought and tried separately, or if the person's score on the static risk assessment instrument for sex offenders is high risk.

Under [this bill], the minimum registration periods would begin to run upon release from custody, and would be tolled during any periods of subsequent incarceration, and restart after any subsequent conviction for failing to register, or a strike offense, or after committing a new sex offense.

Prepared by: Mary Kennedy / PUB. S. /
9/15/17 19:12:02

****** END ******

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

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

Filed on December 30, 1997 and Amended on July 14, 1999;

By County of Tuolumne, Claimant.

NO. CSM 97-TC-15

Sex Offenders: Disclosure by Law Enforcement Officers

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 August 23, 2001)

STATEMENT OF DECISION

On July 26, 2001, the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Pamela Stone, Allan Burdick and Lieutenant John Steely appeared on behalf of claimant. James Lombard and Tom Lutzenberger appeared for the Department of Finance.

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

The law applicable to the Commission's determination of a reimbursable state mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq. and related case law.

The Commission, by a vote of 5 to 2, approved, in part, the test claim.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

BACKGROUND

The test claim legislation (Penal Code sections 290 and 290.4[1]) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

Claimant's Position

Claimant contends that the test claim legislation imposes a reimbursable state mandate for the following activities:

1. Registration (§290, subdivision (a))
2. Record Retention (§290, subdivision (o))
3. Reporting to the Department of Justice (§290, subdivisions (b)(2), (e)(3) and (f)(1))
4. Records Destruction (§290, subdivision (d)(5))
5. Notification of Change of Address (§290, subdivision (f))
6. Notice of Prohibited Conduct (§290, subdivision (l)(1))
7. Disclosure of Information to the Public (§290, subdivision (m))
8. Public Access to CD-ROM & File Maintenance (§290.4, subdivision (a)(4)(A))

Department of Finance's Position

Department of Finance concedes that the test claim legislation may result in additional costs to local law enforcement agencies. Nonetheless, Department of Finance contends that these costs are not reimbursable, because the test claim legislation results in "costs mandated by the federal government." Specifically, Department of Finance asserts that the test claim legislation does no more than implement federal law relating to the public disclosure of the identity of certain sex offenders. Department of Finance contends:

> 1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a

[1] All further statutory references are to the Penal Code unless otherwise indicated.

federal law or regulation and resulted in "costs mandated by the federal government," unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

2. Section 17513 of that Code defines "costs mandated by the federal government" as "…Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation." "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

COMMISSION'S 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 a higher level of service over the former required level of service. The California Supreme Court has defined the word "program," subject to article XIII B, section 6 of the California Constitution, 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 new program or increased level of service must impose "costs mandated by the state." [2]

The analysis is divided into two parts. Part 1 concerns new crimes and new timelines that an individual must register for as a convicted sex offender with the local law enforcement agency. Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a "new program or higher level of service" and impose "costs mandated by the state" on local law enforcement agencies.

---

[2] Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 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; Government Code section 17514.

3

PART 1 –REGISTRATION FOR NEW CRIMES AND TIMELINES

The only issue presented by Part 1, "Registration for New Crimes and Timelines," is whether this portion of the test claim legislation creates a new crime and thus does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

Article XIII B, section 6 of the California Constitution provides that the Legislature may not provide subvention of funds for mandates that define a new crime or change the existing definition of a crime. Section 6 specifically states:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
>
> (a) Legislative mandates requested by the local agency affected
>
> (b) Legislation **defining a new crime or changing an existing definition of a crime**; or [Emphasis added.]
>
> (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Article XIII B, section 6 was codified by Government Code section 17556, subdivision (g), and provides that there are no "costs mandated by the state" when:

> The statute **created a new crime or infraction**, eliminated a crime or infraction, or changed the penalty for a new crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

Claimant contends that the registration requirements in the test claim legislation, section 290, subdivision (a), which includes the duty to register and the time periods in which to register are a reimbursable state mandated program. As described below, the majority of crimes identified in the test claim legislation are not new crimes and have imposed a duty to register on convicted sex offenders for over fifty years. However, the test claim legislation has added some additional crimes that require registration by certain convicted sex offenders. If these individuals fail to register as a sex offender within a specific time period, the test claim legislation states that they are now guilty of a misdemeanor, felony and/or a continuing offense.

- **New Crimes That Require Registration**

Under prior law, any person, since July 1, 1944, who has been convicted in any court in California, another state or a federal or military court who has been released, discharged or paroled or who has been determined to be a mentally disordered sex offender must register under section 290 if convicted under the following offenses:

> kidnapping; assault to commit rape, sodomy or oral copulation; aiding or abetting rape; lewd or lascivious acts involving children; penetration by a foreign object; sexual battery (includes seriously disabled or medically incapacitated victims); rape with a person who cannot give consent because of a mental or physical disability; rape against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another; rape when a person cannot resist because of intoxication or anesthetic; rape when the person is unconscious; rape by threat of future harm; spousal rape; procurement; procurement of a child; abduction of a minor for prostitution; incest; sodomy; oral copulation; continuous sexual abuse of a child; production, distribution or exhibition of obscene matter; sexual exploitation of a child; employment of a minor in the sale or distribution of obscene matter or production of pornography; advertisement of obscene matters depicting minors; possession or control of child pornography; annoying or molesting children; loitering around public, open toilets for the purpose of soliciting any lewd or lascivious or unlawful act; indecent exposure; any felony violation for sending harmful matter to a minor or any crime that a court finds was committed as a result of sexual compulsion or for the purpose of sexual gratification.[3]

However, the test claim legislation[4] now has expanded the list of crimes that require registration by convicted sex offenders and has essentially created a "new" crime, if individuals convicted of the below offenses fails to register within a specific time frame:

> kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object [5] as well as pimping, pandering and aggravated sexual assault of a child.[6]

If the offender fails to register as a sex offender for these new crimes, then the offender is guilty of a misdemeanor, felony and/or a continuing offense. Specifically, section 290 of the test claim legislation, subdivision (g)(1), provides:

> Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

In addition, subdivision (g)(2) provides:

---

[3] Penal Code sections 207; 220; 264.1; 288; 272; 289; 243.4; 261, subdivision (a)(1); 261, subdivision (a)(2); 261, subdivision (a)(3); 261, subdivision (a)(4); 261, subdivision (a)(6); 262, subdivision (a)(1); 266; 266j; 267; 285; 286; 288a; 288.5; 311.2; 311.3; 311.4; 311.10; 311.11; 247, subdivision (a); 647, subdivision (d); 314; 288.2 and 290, subdivision (E).

[4] Penal Code section 290, subdivision (a)(2)(A)-(E).

[5] Penal Code sections 209, 261, 286, 288, 288a, and 289, Statutes of 1997, Chapter 817.

[6] Penal Code sections 266, subdivisions (h)(b); 266, subdivisions (i)(b) and 269, Statutes of 1997, Chapter 818.

> [A]ny person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

Also, subdivision (g)(7) provides:

> Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

Thus, under prior law, a sex offender convicted of kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object as well as pimping, pandering and aggravated sexual assault of a child, did not have to register as a sex offender. Now, under the test claim legislation, if these convicted sex offenders fail to register, they will be guilty of a misdemeanor, felony and/or a continuing offense.

Nonetheless, claimant contends that the test claim legislation only "expands the requirement of registration for sex offenders" and does not create a new crime or change the existing definition of a crime. Claimant's contention is correct insomuch as the list of crimes in which a sex offender must register for has been expanded. However, claimant's analysis of this issue is short sided. Claimant fails to recognize that by adding these crimes the test claim legislation has created a "new" crime. As stated above, if these convicted sex offenders fail to register as a sex offender, they will now be guilty of a misdemeanor, felony and/or a continuing offense; whereas before the test claim legislation, they would not have been guilty of a crime. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

- **New Time Periods in Which to Register**

Section 290 of the test claim legislation has also created new time periods in which certain convicted sex offenders must register including when an offender has multiple addresses, is a sexually violent predator or changes his or her name. Like the above new crimes, failure to register within the proscribed timelines is a misdemeanor, felony and/or a continuing offense.

Specifically, section 290 of the test claim legislation requires a convicted sex offender who has more than one residence to register in each jurisdiction where the offender resides. If the offender resides in one jurisdiction but has multiple addresses in that jurisdiction, then the offender must provide the local law enforcement agency in that jurisdiction with all addresses.[7] If the offender has no residence, the offender must update his or her registration no less than every 90 days with the local law enforcement agency in which the offender is located at the time of registration.[8]

---

[7] Penal Code section 290, subdivision (a)(1)(B), Statutes of 1998, Chapter 929.

[8] Penal Code section 290, subdivision (a)(1)(C), Statutes of 1997, Chapter 820.

6

Additionally, if the convicted sex offender is a sexually violent predator, then the offender must verify his or her address and place of employment including the name and address of the employer, no less than once every 90 days in a manner established by the Department of Justice.[9]

Lastly, if a convicted sex offender changes his or her name, the offender then must inform the local law enforcement agency where the offender is registered within 5 working days of the name change.[10]

As mentioned above, section 290 of the test claim legislation, subdivisions (g)(1)(2)(7), states that it is a misdemeanor, felony and/or a continuing offense if a convicted sex offender does not register as required under the test claim legislation. In addition, other provisions in section 290 state that it is a crime if a convicted sex offender does not register within a specified time period. Specifically, subdivision (g)(6) provides that:

> Except as otherwise provided in paragraph (5), **and in addition to any other penalty imposed under this subdivision**, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. [Emphasis added.]

Subdivision (g)(5), provides that:

> Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

Accordingly, by adding additional timelines in which convicted sex offenders must register, section 290 of the test claim legislation defines a new crime. Under prior law, these convicted sex offenders had no duty to register in the proscribed time periods. Now, under section 290 of the test claim legislation, if they do not register or provide notification of a name change, the offender may be guilty of a misdemeanor, felony or continuing offense. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

Conclusion

Based on the foregoing, a convicted sex offender's "Duty to Register for New Crimes and Timelines" does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

/ / /

---

[9] Penal Code section 290, subdivision (a)(1)(E), Statutes of 1997, Chapter 818.

[10] Penal Code section 290, subdivision (f)(3), Statutes of 1996, Chapter 909.

/ / /

/ / /

/ / /

PART 2 - REMAINING ISSUES PRESENTED BY THE TEST CLAIM LEGISLATION

Issue 1:

Is the test claim legislation a "program" within the meaning of article XIII B, section 6 of the California Constitution by carrying out either the governmental function of providing services to the public or imposing unique requirements on local law enforcement agencies?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program," within the meaning of article XIII B, section 6, as a program that carries out the governmental function of providing a service to the public, or laws, which to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[11] In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[12]

To determine whether the test claim legislation carries out the governmental function of providing services to the public, it is necessary to define the program in which the test claim legislation operates.

California courts have continually held that police and fire protection are two of the most basic functions of local government and are peculiarly governmental in nature.[13] In the present case, the test claim legislation concerns police protection, because it relates specifically to the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies.

Accordingly, the Commission finds that test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Issue 2:

Is the test claim legislation a "new program or higher level of service" within the meaning of article XIII B, section 6 of the California Constitution?

---

[11] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

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

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

To determine if a program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.[14]

/ / /

A breakdown of the required activities imposed on local law enforcement agencies is as follows:

- **Change in Existing Timelines to Register**

Prior law required every convicted sex offender of a specified crime to register in the jurisdiction where the offender resides within 14 days of coming into the applicable jurisdiction and to update the registration within 10 days of the offender's birthday.[15] The test claim legislation shortened these deadlines to within 5 working days of when an offender enters the applicable jurisdiction, and to within 5 working days of the offender's birthday for annual updates.[16]

In addition, prior law required that the convicted sex offender register with the local law enforcement agency that the offender was last registered with in writing within 10 days of a change of address. Within three days after receipt of this information, the local law enforcement agency must forward a copy of the change of address or location to the Department of Justice. The Department of Justice shall forward the appropriate registration data to the local law enforcement agency or agencies having jurisdiction over the new place of residence or location.[17] The test claim legislation is the same as prior law, except that the time period in which an offender has to report his or her change of address was changed from 10 days to 5 working days.

The mere shortening in time of registration deadlines does not change the level of service related to the above activities. Accordingly, there is no new program or higher level of service due to a change in the existing registration deadlines.

- **Violent Crime Information Network**

The test claim legislation states that "[t]he registering agency [local law enforcement agency] shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN)."[18] There was no activity in prior law requiring local law enforcement agencies to submit registrations to VCIN. Therefore, this activity is a new program or higher level of service.

- **Removal of Registration for Decriminalized Conduct**

The test claim legislation exempts a person from registering as a sex offender under specified conditions if the offender was convicted of sodomy or oral copulation between consenting adults prior to January 1, 1976. The Department of Justice is required to remove these individuals from

---

[14] *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835.

[15] Penal Code section 290, subdivision (a), Statutes of 1984, Chapter 1419.

[16] Penal Code section 290, subdivision (a)(1)(A), Statutes of 1996, Chapter 909.

[17] Penal Code section 290, subdivision (e), Statutes of 1950, Chapter 70.

[18] Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

the Sex Offender Registry. Upon notification from the Department of Justice that an offender should be removed from the register, the local law enforcement agency must remove the offender's registration from its files within 30 days from receipt of notification.[19] There was no activity in prior law providing for the decriminalization of this conduct. Therefore, the activity of removing an individual from a local law enforcement agency's file is a new program or higher level of service.

- **Notice of Duty to Register Upon Release, Discharge or Parole**

Prior law provides that any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where the person was confined or is released from a state hospital to which he was committed as a psychopath be informed of the duty to register by the official in charge of the place of confinement before the offender is released. The official in charge must advise the convicted sex offender of the duty to register and must also have the offender read and sign a form that states this duty was explained to the offender. The official in charge of the offender's release must also obtain the address of where the person expects to reside and will report the address to the Department of Justice and to the local law enforcement agency or agencies having jurisdiction over the place that the offender expects to reside. The official in charge must give one copy of the form to the offender, send one copy to the Department of Justice and one copy to the local law enforcement agency or agencies having jurisdiction over the offender. [20]

The test claim legislation contains the same "Notice of Duty to Register" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision (b)(1) and (2). Nonetheless, since the test claim legislation contains the same notification requirement on local law enforcement agencies as prior law, there is no new program or higher level of service related to this activity.

- **Destruction of Records**

Prior law provided that all records specifically relating to the registration of sex offenders in the custody of the Department of Justice, local law enforcement agencies and other agencies or public officials be destroyed when the offender required to register has his or her records sealed under the procedures set forth in section 781 of the Welfare and Institutions Code.[21]

The test claim legislation contains the same "Destruction of Records" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision(d)(5). However, the requirement to destroy the records has remained the same. Thus, there is no new program or higher level of service related to this activity.

- **Pre-register**

The test claim legislation states that a convicted sex offender required to register under its provisions on or after January 1, 1998, shall also pre-register upon incarceration, placement or

---

[19] Penal Code section 290, subdivision (a)(2)(F)(i), Statutes of 1997, Chapter 821.

[20] Penal Code section 290, subdivision (b), Statutes of 1950, Chapter 70.

[21] Penal Code section 290, subdivision (d)(6).

commitment or prior to release on probation. The pre-registering official shall be the admitting officer at the place of incarceration, placement or commitment or the probation officer if the person is to be released on probation. The pre-registration shall consist of a pre-registration statement in writing, signed by the person, giving information that shall be required by the Department of Justice, fingerprints and a photograph of the person.[22] Prior law contained no provision for the activity of pre-registering. Thus, to the extent that a local law enforcement agency must pre-register convicted sex offenders, this activity is a new program or higher level of service.

- **Contents of Registration Upon Release**

Prior law required that a convicted sex offender register upon release from incarceration, placement or commitment with the local law enforcement agency or agencies in which the offender resides. The registration must contain a statement in writing signed by the offender, giving information as may be required by the Department of Justice, fingerprints, a photograph of the offender and the license plate number of any vehicle owned by or registered in the name of the offender. Within three days of receiving this information, the registering law enforcement agency must forward this information to the Department of Justice.[23]

In addition to the above requirements, the test claim legislation imposes some additional requirements on the convicted sex offender as well as local law enforcement agencies. With regard to the signed statement, in addition to the information required by the Department of Justice, the offender must also provide the name and address of his or her employer, and the address of the offender's place of employment if it is different from the employer's main address.[24] With regard to vehicle information, the convicted sex offender must also include information related to any vehicle regularly driven by the offender.[25] The offender must also be notified by the local law enforcement agency that in addition to the requirements of the test claim legislation, the offender may also have a duty to register in any other state where the offender may relocate.[26]

Lastly, the test claim legislation requires that the offender provide the local law enforcement agency with adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing the offender's name and address or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the offender shall advise the registering official and sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the offender has no residence, the offender shall be allowed to register. If the offender claims that he

---

[22] Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

[23] Penal Code section 290, Statutes of 1947, Chapter 1124. This provision, absent minor non-substantive changes, has remained the same since section 290 was originally enacted in 1947.

[24] Penal Code section 290, subdivision (e)(2)(A), Statutes of 1998, Chapter 930.

[25] Penal Code section 290, subdivision (e)(2)(C), Statutes of 1997, Chapter 927.

[26] Penal Code section 290, subdivision (e)(2)(D), Statutes of 1997, Chapter 927.

or she has a residence but does not have any proof of residence, the offender shall be allowed to register but shall furnish proof of residence within 30 days of the day the offender is allowed to register.[27]

Although the above activities are directed at the convicted sex offenders, they also require various activities on local law enforcement agencies to the extent that local law enforcement agencies have to compile this information so that it can be sent to the Department of Justice. Thus, the compiling of this additional data is a new program or higher level of service.

- **Notice of Reduction of Registration Period**

The test claim legislation requires that every convicted sex offender who was required to register before January 1, 1997, shall be notified whenever the offender next re-registers of the reduction in the registration period from 14 days to 5 working days. The notice must be in writing from the local law enforcement agency responsible for registering the individual.[28]

Prior law required every convicted sex offender registering before January 1, 1985 to be notified of the reduction in the registration period from 30 to 14 days. Since the test claim legislation changes the registration period, a new notification is required.[29] Accordingly, the activity of notifying convicted sex offenders of the 14 to 5 day reduction in the timelines to register is a new program or higher level of service.

- **High-Risk Sex Offenders**

The test claim legislation provides that individuals considered to be high-risk offenders can be re-evaluated by the Department of Justice to be removed from the high-risk classification. This process does not involve law enforcement agencies except that the form for evaluation must be available at any sheriff's office. Thus, to the extent that a sheriff's office must maintain this form, there is a new program or higher level of service.[30]

The test claim legislation also provides that the Department of Justice shall continually search its records and identify, on the basis of those records, high-risk offenders. Four times each year, the Department must provide each chief of police and sheriff in the state and any other designated law enforcement entity upon request information regarding the identity of high-risk sex offenders.

Department of Finance contends that although the Department of Justice must send this information to each chief of police and sheriff in the state, these law enforcement agencies can choose to disregard this information, because the test claim legislation does not impose any duty on them in this regard. This assertion is misplaced. As discussed below, in the "Community Notification" section, subdivision (n) of section 290 requires local law enforcement agencies, under certain circumstances, to disclose information about high-risk sex offenders to the public, which includes statistical information. Thus, to the extent that local law enforcement agencies

---

[27] Penal Code section 290, subdivision (e)(2)(E), Statutes of 1997, Chapter 927.

[28] Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

[29] Penal Code section 290, subdivision (l), Statutes of 1985, Chapter 1474.

[30] Penal Code section 290, subdivision (n)(1)(G)(ii), Statutes of 1996, Chapter 908.

need to compile this statistical data related to high-risk offenders, this activity is a new program or higher level of service.[31]

- **Community Notification**

The test claim legislation permits a local law enforcement agency to disclose information about a convicted sex offender[32] or high-risk sex offender[33] under certain circumstances if a peace officer reasonably suspects that a child or other person is at risk. Specifically, the test claim legislation provides:

> When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency **may**, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:
>
> (A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.
>
> (B) Other community members at risk. [Emphasis added.]

This information generally includes information that the agency deems relevant and necessary to protect the public and may include the following:

1. The offender's full name.
2. The offender's known aliases.
3. The offender's gender.
4. The offender's race.
5. The offender's physical description.
6. The offender's photograph.
7. The offender's date of birth.
8. Crimes resulting in registration.
9. The offender's address, which must be verified prior to publication.
10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

---

[31] Penal Code section 290, subdivision (n)(2), Statutes of 1996, Chapter 908.

[32] Penal Code section 290, subdivision (m), Statutes of 1996, Chapter 908.

[33] Penal Code section 290, subdivision (n), Statutes of 1996, Chapter 908.

11. Type of victim targeted by the offender.
12. Relevant parole or probation conditions, such as one prohibiting contact with children.
13. Dates of crimes resulting in classification under the test claim legislation.
14. The date of release from confinement.[34]

Although it is a well-settled principle of statutory construction that the word "may" is ordinarily construed as permissive and "shall" is ordinarily construed as mandatory, there are situations in which "may" is interpreted to mean "shall."[35] In *Los Angeles County v. State*,[36]

the Third District Court of Appeal held:

> The word "may" as used in a statute or constitution is often interpreted to mean "shall" or "must." Such interpretation always depends largely, if not altogether, on the object sought to be accomplished by the law in which the word is used. It seems to be the uniform rule that, where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large – that is, where the public interest or private rights requires that the thing be done then the language, though permissive in form, is peremptory . . .

Since a peace officer is a "public officer,"[37] if a peace officer reasonably suspects that a child or another person is at risk from a sex offender or high-risk sex offender, the peace officer must notify certain members of the public that may be in danger from the sex offender. There was no activity in prior law related to community notification of sex offenders. Thus, the community notification activity is a new program or higher level of service.

- **CD ROM**

The test claim legislation states that on or before July 1, 1997, the Department of Justice shall provide a CD-ROM or other electronic medium containing information about certain sex offenders and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000 and other law enforcement agencies. The local law enforcement agencies "may" obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee and "may" make the CD-ROM or other electronic medium available for viewing by the public.[38]

---

[34] Penal Code section 290, subdivision (m)(4), Statutes of 1996, Chapter 908.

[35] *Common Cause of California v. Board of Supervisors of L.A. County* (1989) 49 Cal.3d 432..

[36] *Los Angeles County v. State* (1923) 64 Cal.App.290.

[37] Government Code section 195 and Evidence Code section 200.

[38] Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

Like the Community Notification activity above, the use of the term "may," though permissive in form, is peremptory. In fact, according to the legislative history, it was the legislative intent that the CD-ROM or other electronic medium shall be made available to the public.[39] Assembly Bill 1562 states that:

> Knowing the identity of sex registrants empowers parents to protect their children from exposure to persons who might do them harm. Likewise, adult victims would similarly be empowered. It deters sex offenders from re-offending by increasing public awareness of their proclivities, thereby discouraging them from contact with children.[40]

Moreover, the California Department of Justice evaluated patterns of sex offenders and conducted a 15-year follow-up of sex offenders first arrested in 1973. The Department of Justice found:

> An analysis of subsequent arrests over the 15-year period (1973-1988) found that nearly one-half (49.4%) were re-arrested for some type of offense and almost 20% (19.7%) for a subsequent sex offense. Sex offenders whose first arrest was for rape by force or threat had the highest recidivism rate, 63.4% for any offense and 25.5% for a subsequent offense. The high recidivist rate could be attributed, in part, to the anonymity of the sex offender.[41]

Accordingly, the test claim legislation requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium. Prior law had no provision related to this activity. Thus, this activity is a new program or higher level of service.

- **Records Retention**

The test claim legislation requires local law enforcement agencies to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.[42] There is no records retention activity under prior law related to CD-ROM or other electronic medium. Accordingly, the records retention activity is a new program or higher level of service.

Conclusion

Based on the foregoing, the following activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution:

---

[39] Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, page 2, paragraph 12.

[40] *Supra*, page 4, paragraph 3.

[41] *Supra*, page 4, paragraph 4.

[42] Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- Community Notification (§290, subdivision (m))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

However, the analysis must continue to determine if the above activities impose "costs mandated by the state," under Government Code section 17514.

Issue 3:

Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code section 17514?

Under Government Code section 17514 a new program or higher level of service must impose "costs mandated by the state." However, under Government Code section 17556, subdivision (c), the Commission **shall not** find "costs mandated by state" if the test claim legislation implemented a federal law.

Government Code section 17556, subdivision (c), provides that there are no "costs mandated by the state" when:

> (c) The statute or executive order implemented a federal law or regulation **and** resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [Emphasis added.]

Government Code section 17513 defines "costs mandated by the federal government" as:

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

- **Federal Law**

History of the Federal Law

There are three federal enactments that concern the test claim legislation: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan's Law and the Pam Lychner Sexual Offender Tracking and Identification Act. The collective result of these enactments is codified in 42 U.S.C. 14071-72 (referred to below as "section 14071")[43] and represents the federal law in this matter. These three enactments are as follows:

1. The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,[44] encourages states to establish an effective sex offender registration system.
2. Megan's Law,[45] which amended the provisions of the Wetterling Act, relates to the release of registration information.
3. The Lychner Act,[46] which makes further amendments to the Wetterling Act, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement agencies.

The federal Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act[47]and has more recently published guidelines to implement Megan's Law and clarify other issues concerning Wetterling Act compliance, or section 14071.[48]

Overview of Section 14071

Section 14071 provides a financial incentive for states to establish 10 year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as "sexually violent predators." States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in funding for HIV testing.[49]

In order to determine if the federal exception applies to the test claim legislation, the Commission must first determine if the test claim legislation implemented section 14071 and resulted in "costs mandated by the federal government." If so, the Commission must then determine if the test claim legislation exceeds the scope of section 14071.

---

[43] 42 U.S.C.A. section 14072 is not relevant to the test claim as it specifically deals with the FBI database.

[44] 42 U.S.C.A. section 14071,Public Law 102-322, 108 Stat. 1796, 2038.

[45] 42 U.S.C.A. section 14071, Public Law 104-145, 110 Stat. 1345, May 17, 1996.

[46] 42 U.S.C.A. section 14071, Public Law 104-236, 110 Stat. 3096, 3097, October 3, 1996.

[47] 61 FR 15110 (issued April 4, 1996), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

[48] 64 FR 572 (issued January 5, 1999) and 64 FR 3590 (issued January 22, 1999), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

[49] 42 U.S.C.A. section 3756, subdivision (f).

- **Findings**

Did the Test Claim Legislation Implement Section 14071?

The legislative history of the test claim legislation shows that it was enacted to implement section 14071. Assembly Bill 1562 specifically states that the passage of the test claim legislation "will launch Megan's Law in California and fulfill the requirements of the federal law." "Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly $5 million in …funding."[50]

In addition, section 14071 specifically provides that states must comply/implement its provisions or lose funding for HIV testing. Section 14071 states that the Attorney General shall establish guidelines for state programs for certain individuals convicted of specified sexual offenses.[51] As mentioned above, the Attorney General issued these guidelines in 1996 and revised and reissued them again in 1999. Section 14071 specifically outlines the provisions that a state registration program must contain[52] and specifies the dates in which states must comply with section 14071 as well as the consequences if a state fails to comply with its provisions.[53]

Accordingly, the Commission finds that the test claim legislation implemented section 14071. However, the analysis must continue to determine if the test claim legislation results in "costs mandated by the federal government."

Does the Test Claim Legislation Result in Costs Mandated by the Federal Government?

"Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet a specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. However, "costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state, local agency or school district**.[54] [Emphasis added.]

In order to determine if the test claim legislation was "implemented at the option of the state," California courts, including the California Supreme Court, have held that "[t]he test for determining whether there is a federal mandate is whether compliance with federal standards 'is a matter of true choice,' that is, whether participation in the federal program 'is truly voluntary.'"[55] The *Hayes* court in following the California Supreme Court's decisions in *City of Sacramento* v. *State of California* (*Sacramento II*),[56] held that a "determination of whether

---

[50] Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

[51] 42 U.S.C.A., section 1407(a), Public Law 103-322, 108 Stat. 2038.

[52] 42 U.S.C.A., section 1407(b), Public Law 103-322, 108 Stat. 2038.

[53] 42 U.S.C.A., section 1407(f)(1)(2), Public Law 103-322, 108 Stat. 2038.

[54] Government Code section 17513.

[55] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 76.

[56] *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51.

compliance with a federal law is mandatory or optional must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance or withdrawal."[57] Application of these factors in the present case is as follows:

- **Nature and Purpose of the Federal Program -** The federal legislation was enacted to provide the public with information regarding certain convicted sex offenders. The centerpiece of the test claim legislation, the registration and notification provisions related to convicted sex offenders, has its genesis in a New Jersey murder case. On July 29, 1994, Megan Kanka was raped and asphyxiated to death by Jesse Timmendequas, Megan's thirty-three year old neighbor. Unbeknownst to Megan's parents, Timmendequas was a convicted child molester living in a nearby home with two other convicted pedophiles. The brutal murder of this young girl shocked the nation, and catapulted the issue of sexually violent crimes against children onto a national stage.

- **Whether the Federal Statute Suggests an Intent to Coerce –** Although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders. According to the test claim legislation, "[a] state that fails to implement the program as described in this section [the test claim legislation] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title."[58] Section 3756 provides:

  > (a) States
  >
  > Subject to subsection (f) of this section, of the total amount appropriated for this subchapter in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 3761 of this title shall be set aside for section 3752 of this title and allocated to States as follows:
  >
  > (1) $500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and
  >
  > (2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States. [59]

  Subsection (f) provides for the testing of certain sex offenders for human immunodeficiency virus.[60]

---

[57] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582; *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 76.

[58] 42 U.S.C.A. section 1407(a), 108 Stat. 2038.

[59] 42 U.S.C.A. section 3756(a), 108 Stat. 2138.

[60] 42 U.S.C.A. section 3756(f), 108 Stat. 2138.

19

In addition, as discussed above, the legislative history of the test claim legislation shows that if California refused to implement section 14071, it would lose substantial funds for HIV testing. Specifically, Assembly Bill 1562 states that "[f]ailure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly $5 million in …funding."[61] Clearly, the Legislature believed that such a loss in funding was "substantial," since it was the basis of compliance with section 14071.

Thus, although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders.

- **When State and/or Local Participation Began** – Section 170101 of the Violent Crime Control and Law Enforcement Act was enacted on September 13, 1994. Congress amended and President Clinton signed the Wetterling Act portion of section 14071 in May of 1996. The test claim legislation was enacted by an "urgency statute" and became effective on September 25, 1996.
- **The Penalties, if any Assessed for Withdrawal or Refusal to Participate or Comply** – There are no penalties if a state fails to comply with the federal legislation. However, as mentioned above, failure to comply will result in a loss of federal funding for HIV testing for certain sex offenders.
- **Any Other Practical or Legal Consequence of Nonparticipation, noncompliance or withdrawal** - Practically speaking, California, like all the other states, had no choice but to comply with the federal legislation or lose substantial funding.

Based on the above factors, the Commission finds that the state had no "true choice" but to comply with the provisions of section 14071. Accordingly, the test claim legislation implemented a federal law and resulted in costs mandated by the federal government.[62]

However, the federal exception does not apply to the extent that the test claim legislation mandates costs that exceed the mandate in that federal law or regulation.[63] Thus, the Commission must compare the test claim legislation to the federal legislation to determine which costs or activities exceed the federal mandate.

Does the Test Claim Legislation Exceed the Federal Mandate?

In order to determine if the test claim legislation exceeds section 14071, the Commission has compared the activities imposed by the test claim legislation to section 14071 below. However, before comparing the test claim legislation and section 14071, it should be noted that section 14071 was not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, section 14071's standards constitute a

---

[61] Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

[62] Government Code section 17556, subdivision (c).

[63] *Ibid.*

floor for state programs, not a ceiling. States do not have to go beyond sections 14071's minimum requirements to maintain eligibility for funding, but they may retain the discretion to do so. State programs often contain elements that are not required under section 14071.[64]

Activities Imposed by the Test Claim Legislation	Federal Mandate Section14071.
Violent Crime Information Network[65]	Section 14071 has no requirement that the state establish a Violent Crime Information System. Thus, this activity exceeds the federal mandate.[66]
Removal of Registration for Decriminalized Conduct [67]	Section 14071 has no provision related to the activity of removing a registration for decriminalized conduct. Thus, this activity exceeds the federal mandate.
Pre-register [68]	Section 14071 has no provision related to the activity of pre-registering convicted sex offenders. Thus, this activity exceeds the federal mandate.
Contents of Registration Upon Release [69]	The only activity in section 14071 related to the registration activities in the test claim legislation is the requirement that local law enforcement agencies advise a convicted sex offender of a possible duty to register in any other state where the offender resides.[70] Thus, with the exception of this activity, section 14071 does not have a specific mandate related to the registration activities imposed by the test claim legislation.
Notice of Reduction of Registration Period[71]	Section 14071 has no provision related to the notice activity. Thus, this activity exceeds the federal mandate

[64] 64 FR 572.

[65] Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

[66] 42 U.S.C.A. section 14071, subdivision (b)(2)(3)(4), 108 Stat. 2038.

[67] Penal Code section 290, subdivision (F)(i)(I)(II)(III), Statutes of 1997, Chapter 821.

[68] Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

[69] Penal Code section 290, subdivision (e)(2)(A)(B)(C)(D)(E), Statutes of 1997, Chapter 927.

[70] 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

[71] Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

21

High-Risk Sex Offenders[72]	Section 14071 has no provision related to the activities associated with high-risk sex offenders. Thus, this activity exceeds the federal mandate.
Community Notification[73]	Section 14071 provides that any local law enforcement agency "may" release relevant information about a convicted sex offender that is necessary to protect the public concerning a specific person required to register.[74] In the context of this section, the use of the term "may," though permissive in form, is peremptory. Thus, the community notification activity is a federal mandate and not a "cost mandated by the state."
CD ROM[75]	Although section 14071 has no provision related to the CD-ROM activity, Department of Finance contends that this activity merely implements federal law, because 42 U.S.C.A 14071, subdivision (e)(2), states that "the State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section." This contention is incorrect. Section 14071 does not require the relevant information to be released by CD ROM. Thus, this activity exceeds the federal mandate.
Records Retention[76]	Section 14071 has no provision related to the record retention activity. Thus, this activity exceeds the federal mandate.

In summary, the following activities imposed by the test claim legislation exceed section 14071, the federal mandate, and thus result in "costs mandated by the state:"

[72] Penal Code section 290, subdivision (n)(1)(G)(ii)(2), Statutes of 1996, Chapter 908.

[73] Penal Code section 290, subdivision (m)(n), Statutes of 1996, Chapter 908.

[74] 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

[75] Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

[76] Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- **Violent Crime Information Network**

  This activity requires a local law enforcement agency to submit sex offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network

- **Removal of Registration for Decriminalized Conduct**

  This activity requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice.

- **Pre-register**

  This activity requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender.

- **Contents of Registration Upon Release**

  A convicted sex offender has always had the duty to register upon release with the local law enforcement agency in which the offender will reside. While most of the activities related to this registration falls on the convicted sex offender, the following related activities are imposed on the registering local law enforcement agency:

  1. The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address.
  2. The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.
  3. The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.

23

- **Notice of Reduction of Registration Period**

  This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next re-registers of the reduction in the registration period was from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual.

- **High-Risk Sex Offenders**

  The test claim legislation imposes some new activities on specific local law enforcement agencies related to high-risk offenders. These activities are as follows:

  1. Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.

  2. A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.

- **CD ROM**

  This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium.

- **Records Retention**

  This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.

Finally, the test claim legislation contains a sunset provision wherein it is only operative until January 1, 2004.

CONCLUSION

The Commission finds that Part 2 of the test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

The Commission further finds that the following required activities, as outlined in more detail above, are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Lastly, the Commission finds that all other activities in the test claim legislation do not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Accordingly, the Commission approves the test claim, in part, as outlined above.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR COMMISSION DECISION ON: Penal Code Sections 290 and 290.4 Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378), Statutes 1997, Chapters 17 (SB 947), 80 (AB 213), 817 (AB 59), 818 (AB 1303), 819 (SB 314), 820 (SB 882), 821 (AB 290) and 822 (SB 1078), Statutes 1998, Chapters 485 (AB 2803), 550 (AB 2799), 927 (AB 796), 928 (AB 1927), 929 (AB 1745) and 930 (AB 1078) Claim No. 97-TC-15 Directed by Statutes 2004, Chapter 316, Section 3, Subdivision (a) (AB 2851) Effective July 1, 2005	No. 04-RL-9715-06 *Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 27, 2005)*

STATEMENT OF DECISION

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

Paula Higashi 10-7-2007

PAULA HIGASHI, Executive Director Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR COMMISSION DECISION ON: Penal Code Sections 290 and 290.4 Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378), Statutes 1997, Chapters 17 (SB 947), 80 (AB 213), 817 (AB 59), 818 (AB 1303), 819 (SB 314), 820 (SB 882), 821 (AB 290) and 822 (SB 1078), Statutes 1998, Chapters 485 (AB 2803), 550 (AB 2799), 927 (AB 796), 928 (AB 1927), 929 (AB 1745) and 930 (AB 1078) Claim No. 97-TC-15 Directed by Statutes 2004, Chapter 316, Section 3, Subdivision (a) (AB 2851) Effective July 1, 2005	No. 04-RL-9715-06 *Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on September 27, 2005)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim on reconsideration during a regularly scheduled hearing on September 27, 2005. Nick Schweizer appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of 5-0.

The Commission finds, in years in which they are not suspended by the Legislature,[1] that the test claim statutes impose a reimbursable state mandate on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556, for all activities listed in the *Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)* Statement of Decision (97-TC-15)[2] except for: (1) those that implement a federal

[1] This program is suspended in the Fiscal Year 2005-2006 Budget Act, Statutes 2005, chapter 38, Item 8885-295-001, Schedule 3 (d).

[2] See Exhibit A to the Final Staff Analysis, Item 4, adopted September 27, 2005, page 383, hereafter referred to as Exhibit A.

law and have costs that are, in context, de minimis; or (2) one that is no longer required because it is a one-time activity.

Except for the one-time activity, the modifications to the Commission's prior Statement of Decision are based on the case *San Diego Unified School District. v. Commission on State Mandates.*[3] The modifications are noted in strikeout at the end of this Statement of Decision.

BACKGROUND

Assembly Bill 2851 directs the Commission to reconsider whether the *Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)* mandate constitutes a reimbursable program under article XIII B, section 6 of the California Constitution, as follows:

> Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:
>
> (a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

The Test Claim Statute

Since the 1940s, Penal Code section 290[4] has required persons convicted of certain sex offenses to register as sex offenders. Section 290[5] applies automatically to the offenses listed, and imposes on convicted offenders a lifelong obligation to register. The offender must appear in person to register with the police department of the city in which he or she resides, or with the sheriff's department if he or she resides in an unincorporated area or city with no police department. The offender has five working days to register after release from custody or on probation, or after coming into, or changing his or her residence within, any city or county.[6]

The state Department of Justice (DOJ) operates a 900 number and a website for public inquiries as to a whether an individual is a registered sex offender. The DOJ also sends to law enforcement agencies a CD-ROM or other electronic media that contains offender information. The CD-ROM must be made available to individuals who request it.

---

[3] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*;

[4] Added by Statutes 1947, chapter 1124.

[5] All statutory references are to the Penal Code unless otherwise indicated.

[6] See <www.meganslaw.ca.gov/registration/law.htm> as of May 27, 2005.

Program Amendments

The registration program has been amended many times over the years. The original test claim consists of the following 16 amendments to Penal Code sections 290 and 290.4.

Statutes 1996, chapter 908 – This bill authorizes law enforcement to disclose sex offender registration information that is necessary to protect the public (but not victim information). It requires DOJ to provide a CD-ROM or other electronic medium with sex-offender information to law enforcement agencies. It also revises the 900-number provisions (DOJ is required to operate a 900-number for people to call and find out if a person is an offender). The Senate analysis of this bill states that the bill implements the federal Megan's law (summarized below).

Statutes 1996, chapter 909 – This bill reduces the registration period from 14 to 5 working days of the offender coming into the jurisdiction, and reduces the annual updating period from 10 to 5 working days of the offender's birthday. It makes these changes applicable to name changes. It requires registering agencies to notify persons of the 5-day requirement.

Statutes 1997, chapter 17 – This is a code maintenance bill that makes no substantive changes.

Statutes 1997, chapter 80 – This bill clarifies that an offender who was convicted in another state is required to register if the offense would have required the offender to register in California if committed here. It requires the Attorney General (AG) to work with law enforcement to determine if the registry is meeting local needs, and to work with other state's AGs on related issues.

Statutes 1997, chapter 817 – This bill amends kidnapping laws to increase penalties, and makes specified kidnapping provisions subject to the offender registration requirements.

Statutes 1997, chapter 818 – This bill adds the following offenses for which an offender must register: pimping or pandering involving a minor, aggravated sexual assault of a child, and solicitation to commit sexual assault. It requires sexually violent predators to verify their registration every 90 days. It also provides for the exchange of specified information with the DOJ concerning a patient committed to specified mental health facilities as a sexually violent predator.

Statutes 1997, chapter 819 – This bill requires juveniles to register for specified additional offenses. It also requires offenders to register at community colleges (in addition to the University of California and California State University campuses under prior law) if domiciled at the school's facility.

Statutes 1997, chapter 820 – This bill requires offenders who have no residence address to register every 90 days (in addition to the requirement to register within five days of coming into the city or county).

Statutes 1997, chapter 821 – This bill extends the registration requirement to persons found guilty in the guilt phase of a trial for an offense subject to registration but who is found not guilty by reason of insanity. Also, it exempts a person from registering who was convicted of sodomy or oral copulation between consenting adults prior to January 1, 1976, under specified conditions, and would require the DOJ to remove that person from the Sex Offender Registry. The bill prohibits any entity from charging a fee to register or update a registration. It requires

the offender to preregister upon incarceration, placement, commitment, or before release on probation and prohibits the offender's release until he or she has signed the form and provided the address information required. Where the offender is to be released on probation, the bill requires the probation officer to inform the offender of the requirement to register, and provides that an offender required to preregister shall only be preregistered once.

Statutes 1997, chapter 822 – This bill extends the sunset date for the operation of the 900 number and the CD-ROM distribution to local law enforcement agencies to January 1, 2001. It requires DOJ to prepare a pamphlet for people requesting information from the 900 number, and who provide an address.

Statutes 1998, chapter 485 – This is a code maintenance bill that makes no substantive changes.

Statutes 1998, chapter 550 – This bill requires the CD-ROM distribution to local law enforcement be monthly rather than quarterly. It also restricts living arrangements of offenders released on parole.

Statutes 1998, chapter 927 – This bill authorizes any child care custodian, as defined, or any private or public school or day care employee who receives information from a law enforcement entity to disclose specified information in the manner and to the extent authorized by the law enforcement entity. It immunizes from civil liability any public or private educational institution, day care facility, any employee thereof, or any child-care custodian who in good faith disseminates that information.

Statutes 1998, chapter 928 – This bill requires offenders to provide adequate proof of residence, as specified. If the offender fails to provide proof of residence within 30 days of when the offender is allowed to register, he or she is guilty of a misdemeanor. The bill gives victims of crime the right to be notified by the district attorney when the defendant is convicted of any number of specified sex offenses. It also authorizes courts as a condition of probation to order offenders to stay away from victims.

Statutes 1998, chapter 929 – Designated a technical clean-up bill, this bill requires offenders to reregister when changing addresses within a city or county, and requires local law enforcement to submit the registrations, including annual updates and changes, into DOJ's Violent Crime Information Network. It requires offenders to inform law enforcement of a change of address or location, whether within the jurisdiction where the offender is currently registered, or in a new jurisdiction (including outside California). For purposes of some offender provisions, the bill includes in the definition of "law enforcement agency" "every local agency expressly authorized by statute to investigate or prosecute violators."

Statutes 1998, chapter 930 – This bill amends provisions regarding disclosure of information by law enforcement. It immunizes from civil liability any public or private school, day care facility, or any employee thereof, or any child-care custodian, from good-faith information disclosure.

Federal "Megan's Law"

There are three federal enactments that concern the test claim statutes, as follows:

- The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,[7] encourages states to establish an effective sex offender registration system.
- Megan's Law,[8] which amended the provisions of the Wetterling Act, relates to the release of registration information.
- The Lychner Act,[9] which makes further amendments to the Wetterling Act, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement agencies.

The collective result of these enactments is codified in 42 U.S.C. 14071-14072 (referred to below as "section 14071")[10] and represents the federal law in this matter. The federal Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act[11] and has published guidelines to implement Megan's Law and clarify other issues concerning Wetterling Act compliance, or section 14071.[12]

Section 14071 provides a financial incentive for states to establish 10-year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as "sexually violent predators." States that fail to establish such systems within three years (subject to a possible two-year extension) face a 10 percent reduction in funding for drug enforcement.[13]

---

[7] Title 42 United States Code section 14071, Public Law 102-322, 108 Stat. 1796, 2038.

[8] Title 42 United States Code section 14071, Public Law 104-145, 110 Stat. 1345, May 17, 1996.

[9] Title 42 United States Code section 14071, Public Law 104-236, 110 Stat. 3096, 3097, October 3, 1996.

[10] Title 42 United States Code section 14072 is not relevant to the test claim as it specifically deals with the FBI database.

[11] 61 Federal Register 15110 (April 4, 1996), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration (Exhibit A, p. 1529).

[12] 64 Federal Register 572 (Jan. 5, 1999) and 64 Federal Register 3590 (Jan. 22, 1999), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration (Exhibit A, p. 1547).

[13] Title 42 United States Code section 3756 (Exhibit A, p. 1584a).

Commission Statement of Decision

On August 23, 2001, the Commission adopted the *Sex Offenders: Disclosure by Law Enforcement Officers* Statement of Decision (97-TC-15).[14] The Commission first determined that additional crimes for which a person is required to register as a sex offender, and new time lines within which to register for specified sex offenders, do not impose a reimbursable state mandate under article XIII B, section 6 because the activity defines a new crime or changes an existing definition of a crime. The Commission next determined that the following activities were not a new program or higher level of service: changing existing timelines within which to register, providing notice of a duty to register, and destroying specified records under certain conditions. The Commission also found that two of the activities were federal mandates: advising a convicted sex offender of a possible duty to register in any other state where the offender resides, and releasing relevant information about a convicted sex offender that is necessary to protect the public. The remaining activities were found to exceed the federal mandate in Megan's Law and therefore constitute a reimbursable mandate. These were outlined in the Commission's original Statement of Decision as follows:

- **Violent Crime Information Network:** This activity requires a local law enforcement agency to submit sex-offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network (§ 290 (a)(1)(F), Stats. 1998, ch. 929).
- **Removal of registration for decriminalized conduct:** This activity requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice (§ 290 (a)(2)(F)(i)(III), Stats. 1997, ch. 821).
- **Pre-register:** This activity requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender (§ 290 (e)(1)(A-C), Stats. 1997, ch. 821).
- **Contents of registration upon release:** A convicted sex offender has always had the duty to register upon release with the local law enforcement agency in which the offender will reside.[15] While most of the activities related to this registration falls on the convicted sex offender, the following related activities are imposed on the registering local law enforcement agency: (§ 290 (e)(2)(A-E))
    - The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the

[14] Exhibit A, page 1707.

[15] Actually, this has been required since the 1940s.

name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address.

- The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.
- The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.[16]

- **Notice of Reduction of Registration Period:** This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next re-registers of the reduction in the registration period from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual (§ 290 (l)(1)).[17]
- **High-Risk Sex Offenders:** The test claim legislation imposes some new activities on specific local law enforcement agencies related to high-risk offenders. These activities are as follows:
  - Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.[18]
  - A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.[19]

---

[16] The parameters and guidelines state, "If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender." (§ 290, subd. (e)(2)(E).) (Exhibit A, p. 1868).

[17] Under current law, sex offenders are also required to re-register every 90 days, and must be notified of their increased registration obligations whenever they register (§ 290 (l)(2)).

[18] This requirement is currently in section 290.45, subdivision (b)(1)(G)(ii).

- **CD-ROM**: This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies to provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium (§ 290.4 (a)(4)(A)).
- **Records Retention:** This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years (§ 290.4 (l)), and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders (§ 290.45 (c), former § 290 (o)).

Commission Parameters and Guidelines

The Commission adopted parameters and guidelines[20] for the test claim statutes in March 2002. In addition to the activities listed above, the following one-time activities were added under the heading "Reimbursable Costs."

> For each eligible claimant, the following activities are eligible for reimbursement:
>
> A. One-Time Activities
>
> 1. Train staff on implementing the reimbursable activities listed in Section IV, activities 2 through 13, of these parameters and guidelines. (One-time activity per employee.)
> 2. Develop internal policies, procedures, and manuals to implement *Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law").*
> 3. Notify every registered sex offender convicted prior to January 1, 1997, within the claimant's jurisdiction of the reduction in the time to register or reregister from 14 days to 5 days. (Pen. Code, § 290, subd. (l)(1).)[21] *(Reimbursement period begins October 8, 1997.)*

State Agency Positions

Legislative Analyst's Office: The Legislative Analyst's Office (LAO), in its publication *New Mandates: Analysis of Measures Requiring Reimbursement* (December 2003),[22] reviews 23 Commission decisions, including *Sex Offenders: Disclosure by Law Enforcement Officers.*

---

[19] This requirement is currently in section 290.45, subdivision (b)(2).

[20] Exhibit A, page 1865.

[21] As amended by Statutes 1997, chapter 821, an urgency statute effective October 8, 1997.

[22] <http://www.lao.ca.gov/2003/state_mandates/state_mandates_1203.html> as of June 6, 2005.

LAO asserts that one activity in the parameters and guidelines (Ps&Gs) appears inconsistent with the Commission's Statement of Decision.

> Specifically, the Ps&Gs would allow local law enforcement agencies to claim state reimbursement for "the development of internal policies, procedures, and manuals to implement Megan's Law." This provision appears to allow localities to seek state reimbursement for *all* policies, procedures, and manuals related to Megan's Law, including those which relate to federally mandated aspects of the state law. For this reason, we recommend the Legislature request the commission to review the Ps&Gs to ensure that local governments seek reimbursement for only the development of internal policies, procedures, and manuals that relate to state-reimbursable activities.[23]

No other state agency has submitted comments on this reconsideration, and no comments were submitted on the draft staff analysis.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[24] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[25] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[26] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[27]

---

[23] *Ibid.*

[24] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[25] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[26] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[27] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[28]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[29] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[30] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[31]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[32]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[33] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[34]

Issue 1: What is the effective date of the Commission's decision on reconsideration?

Assembly Bill 2851, an urgency statute that became effective on August 25, 2004, directs the Commission to reconsider its statement of decision on the *Sex Offenders: Disclosure by Law Enforcement Officers* test claim. According to the legislative history, Assembly Bill 2851 implements the changes recommended by the Assembly Special Committee on State Mandates. This committee was established in 2003 to review all reimbursable state mandates, particularly

---

[28] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[29] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[30] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[31] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[32] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[33] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[34] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

those that have been suspended or deferred, and to recommend reforms to the reimbursement system.

The parameters and guidelines for the *Sex Offenders* test claim were adopted in March 2002, with a reimbursement period beginning July 1, 1996, or later (some activities were reimbursable starting September 25, 1996, October 8, 1997, or January 1, 1999, depending on the effective date of the test claim statute).

Assembly Bill 2851, however, does not specify the effective date for the Commission's decision on reconsideration.[35] The question is whether the Legislature intended to apply the Commission's decision on reconsideration retroactively back to the original reimbursement period of July 1, 1997 (i.e., to reimbursement claims that have already been filed, some of which may have been paid), or to prospective claims filed in future budget years.

Unlike other statutes directing reconsideration of Commission decisions (e.g., Sen. Bill No. 1895), Assembly Bill 2851 is *not* a trailer bill to the Budget Act of 2004. Thus, for the reasons below, the Commission finds the Legislature intended that the Commission's decision on reconsideration apply prospectively to future budget years only, beginning July 1, 2005.

A statute may be applied retroactively only if the statute contains "express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application."[36] In *McClung v. Employment Development Department,* the California Supreme court explained this rule as follows:

> "Generally, statutes operate prospectively only." [Citation omitted.] "The presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly ... For that reason, the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." [Citation omitted.] "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact." [Citation omitted.]
>
> This is not to say that a statute may never apply retroactively. "A statute's retroactivity is, *in the first instance, a policy determination for the Legislature* and one to which courts defer absent 'some constitutional objection' to retroactivity." [Citation omitted.] But it has long been established that a statute that interferes with antecedent rights will not operate retroactively unless such retroactivity be "the unequivocal and inflexible import of the terms, and the

---

[35] In this respect, Assembly Bill 2851 is different than another recent statute directing the Commission to reconsider a prior final decision. Statutes 2004, chapter 227, which directs the Commission to reconsider Board of Control test claims relating to regional housing, states in Section 109, "[a]ny changes by the commission shall be deemed effective July 1, 2004."

[36] *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475.

> manifest intention of the legislature." [Citation omitted.] "*A statute may be applied retroactively only if it contains express language of retroactively [sic] or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application.*" [Citation omitted.] (Emphasis added.)[37]

There is nothing in the plain language of Assembly Bill 2851 or its legislative history to suggest that the Legislature intended to apply the Commission's decision on reconsideration retroactively. In the absence of clear legislative intent to the contrary, the Commission finds that Assembly Bill 2851 is not to be applied retroactively, and the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2005. Thus, to the extent the Commission modifies its prior decision in *Sex Offenders: Disclosure by Law Enforcement Officers*, the changes would become effective for reimbursement claims filed for the 2005-2006 fiscal year.

Reimbursement for this mandate, however, has been suspended in the 2004-2005,[38] and 2005-2006[39] State Budget Acts pursuant to Government Code section 17581, which states in pertinent part:

> (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:
>
> (1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIIIB of the California Constitution.
>
> (2) The statute or executive order, or portion thereof, or the commission's test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

This means that local agencies are not required to perform the activities in the original *Sex Offenders* Statement of Decision in years in which it is suspended in the state budget. Any local agency performing these activities would be doing so voluntarily, at its discretion. Activities performed at the discretion of local agencies are not reimbursable.[40] Therefore, the Commission

---

[37] *Ibid.*

[38] Statutes 2004, chapter 208, Item 0820-295-0001, Schedule (3), Provision 5.

[39] Statutes 2005, chapter 38, Item 8885-295-0001, Schedule (3)(d).

[40] *Kern High School Dist., supra,* 30 Cal.4th 727, 743.

finds that in years this mandate is suspended pursuant to Government Code section 17581, no reimbursement is required.

Issue 2: Does the test claim legislation constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution in light of federal statutes enacted and federal court decisions rendered since the test claim statutes were enacted?

Assembly Bill 2851 directs the Commission to reconsider this claim "in light of federal statutes enacted and federal and state court decisions rendered"[41] since the test claim statutes were enacted. Administrative agencies, such as the Commission, are entities of limited jurisdiction that have only the powers that have been conferred on them, expressly or by implication, by statute or constitution.[42]

Therefore, given the legislative direction in Assembly Bill 2851 to reconsider the prior decision, the scope of review here is limited to applying statutes or cases adopted since the original Statement of Decision was adopted (August 2001), to the activities found reimbursable (as listed above) in the Commission's original Statement of Decision.

Federal statutory amendment: Since the test claim statute was enacted, the federal law has been amended to add, "The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous."[43] California implemented this federal provision by Statutes 2004, chapter 745 (Assem. Bill No. 488). Since these provisions were enacted after the original Statement of Decision, however, they are outside the Commission's jurisdiction and beyond the scope of this reconsideration.

The Commission is not aware of federal court decisions that would impact this test claim.

Issue 3: Does the test claim legislation constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution in light of state court decisions rendered since the test claim statutes were enacted?

There have been 11 published state court decisions related to mandates rendered since 1996 when the first test claim statute was enacted. Of these, only *San Diego Unified School Dist. v. Commission on State Mandates*[44] warrants discussion.

***San Diego Unified School Dist.* case:** The California Supreme Court in *San Diego Unified School Dist.* discussed whether the hearing procedures set forth in Education Code section

---

[41] Statutes 2004, chapter 316, section 3, subdivision (a).

[42] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

[43] Public Law 108-21 (April 30, 2003), Title 42 United States Code section 14071 (e)(2).

[44] *San Diego Unified School Dist., supra,* 33 Cal.4th 859.

48918[45] should be considered to have been adopted to implement a federal due process mandate (making the costs nonreimbursable under article XIII B, section 6).[46]

In deciding the issue, the court relied on the reasoning of *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal. App. 4th 805, which discussed whether ancillary county costs for providing indigent criminal defense services was reimbursable. The court found that the test claim statute merely implemented the requirements of federal constitutional law and that even in the test claim statute's absence, the counties would be responsible for providing the services under the Sixth Amendment of the U.S. Constitution. The court also ruled the "procedural protections that the Legislature had built into the statute … were merely incidental to the federal rights codified by the statute, and their 'financial impact' was de minimis."[47]

> Accordingly, the Court of Appeal concluded, the Penal Code section [test claim statute] in its entirety—that is, *even those incidental aspects of the statute that articulated specific procedures, not expressly set forth in federal law, for the filing and resolution of requests for funds*—constituted an implementation of federal law, and hence those costs were nonreimbursable under article XIII B, section 6. [Emphasis in original.] [¶…¶]
>
> In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they did not significantly increase the cost of compliance with the federal mandate. … such incidental procedural requirements, producing at most a de minimis added cost, should be viewed as *part and parcel* of the underlying federal mandate and hence nonreimbursable. [Emphasis added.] [¶…¶]
>
> In light of these considerations, we agree with the conclusion reached by the Court of Appeal in *County of Los Angeles II, supra,* 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304: for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law--and whose costs are, in context, de minimis--should be treated as *part and parcel* of the underlying federal mandate.[48] [Emphasis added.]

---

[45] The court stated, "The District asserts that in this respect, *section 48918* constitutes a 'new program or higher level of service' related to an existing program under article XIII B, section 6 of the state Constitution and under Government Code section 17514. We shall assume for analysis that this is so." [Emphasis in original.] *Id.* at page 885.

[46] *Id.* at page 888.

[47] *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th. 805, 817.

[48] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 889-890.

The issue, therefore, is whether the activities found reimbursable in the original Statement of Decision are "part and parcel" of the federal Megan's law, using the Supreme Court's two elements: first, whether the activity is intended to implement the federal mandate, and second, whether the activity's costs are, in context, de minimis. If the activity is part and parcel of the federal law, reimbursement for it is not required under article XIII B, section 6.[49]

Three of the reimbursable activities in the original Statement of Decision were enacted by Statutes 1996, chapter 908[50] which, according to its legislative history, was enacted to implement the federal Megan's Law[51] (P.L. 104-145; 42 U.S.C. 14071(d)).

- For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, to provide the necessary equipment and staff assistance for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other electronic medium, and to obtain information from individuals requesting access to the CD-ROM as required by the Department of Justice. (Pen. Code, § 290.4, subd. (a)(4)(A).)
- Provide high-risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high-risk classification. (Pen. Code, § 290.45, subd. (b)(1)(G)(ii), former Pen. Code, § 290, subd. (n)(1)(G)(ii).)
- Maintain such photographs and statistical information concerning high-risk sex offenders as is received quarterly from the Department of Justice. (Pen. Code, § 290.45, subd. (b)(2), former Pen. Code, § 290 subd. (n)(2).)

CD-ROM: The first activity, disseminating information via CD-ROM, implements a part of the federal statute that states, "The State or any agency … shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section…."[52] There is no requirement in the federal statute to use local law enforcement agencies to release the information. The state could have released the information directly to the public without using local law enforcement. Moreover, the method of requiring law enforcement to provide equipment for and assist in the use of CD-ROMs for all of California's counties and large city police departments appears to significantly increase the cost of compliance with the federal mandate, thereby creating more than a de minimis added cost. Therefore, the Commission finds that the CD-ROM activity is not part and parcel of the federal mandate and is therefore reimbursable under article XIII B, section 6.

---

[49] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 888; see also Government Code sections 17513 and 17556, subdivision (c).

[50] Statutes 1996, chapter 908 originally contained a sunset provision making it operative until January 1, 2004, but it was extended to January 1, 2007 (Stats. 2004, ch. 731).

[51] Senate Committee on Criminal Procedure, Analysis of Assembly Bill No. 1562 (1995-96 Reg. Sess.) amended June 3, 1996, pages f-h (See Exhibit D to the Final Staff Analysis, Item 4, adopted September 27, 2005).

[52] Title 42 United States Code section 14071 (e)(2) (Exhibit A, p. 1519).

High-Risk Offenders: As to the two activities above concerning high-risk sex offenders, these do not implement the federal mandate. The federal Megan's law does not define or mention high-risk offenders,[53] so activities touching on high-risk offenders are also not part and parcel of the federal mandate and are therefore reimbursable under article XIII, section 6.

Violent Crime Information Network: Another activity found reimbursable in the original Statement of Decision concerns the Violent Crime Information Network. This activity requires a local law enforcement agency to submit sex-offender registrations from its jurisdiction directly into the Department of Justice (DOJ) Violent Crime Information Network. Before this statute, (Stats. 1998, ch. 929) the law enforcement agency had to forward a copy of the change of address information to DOJ within three days after receipt of the information. (Former Penal Code, § 290 subd. (f)(1).)

This activity does implement the federal Megan's law provision that requires states to "ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system." The federal provision also requires the state to "ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation."[54] The requirement also produces a de minimis added cost (beyond the cost of the federal Megan's law). Therefore, the Commission finds that submitting the information into the Violent Crime Information Network is part and parcel of the federal mandate and is therefore not reimbursable.

Removal of registration for decriminalized conduct: This activity from the original Statement of Decision requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice.

This activity does not implement the federal mandate. The federal Megan's Law does not mention removing sex offenders from the system. Therefore, this activity is not part and parcel of the federal mandate, and thus, is reimbursable.

Pre-register: This activity from the original Statement of Decision requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender.

The Commission finds that this activity does not implement the federal mandate, which only covers registration upon release, parole, supervised release, or probation,[55] and for which the

---

[53] The federal Megan's Law guidelines mention designating risk levels to offenders as one approach to disseminating sex offender information. (64 Fed. Reg. 572) (Exhibit A, p. 1572).

[54] Title 42 United States Code section 14701 (b)(2)(A) (Exhibit A, p. 1517). The guidelines state, "The Act leaves states discretion in determining which state record system is appropriate for storing registration information …." (64 Fed. Reg. 572) (Exhibit A, p. 1567).

[55] Title 42 United States Code section 14701 (b) (Exhibit A, pp. 1516-1518).

registration requirement applies "except during ensuing periods of incarceration."[56] Therefore, this activity is not part and parcel of the federal mandate, and thus, is reimbursable.

Contents of registration upon release: The Statement of Decision found that the following activities are imposed on the registering local law enforcement agency: (1) ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address; (2) ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration; (3) ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable; and (4) if the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.

Requiring the offender's employment information implements the federal Megan's Law, which requires collecting employment information for offenders who work or attend school in states other than their states of residence.[57] According to the guidelines, "The 'registration information' the state must accept from such a registrant to comply with the Act is, at a minimum, information concerning the registrant's place of employment or the school attended in the state and his address in his state of residence."[58] This is an activity, therefore, that implements the federal Megan's Law. It also imposes a cost that is, in context, de minimis, because collecting employment information can be accomplished when collecting the offender's other information. Thus, the Commission finds that collecting employment information is part and parcel of the federal mandate and therefore, not reimbursable.

Requiring vehicle information does not implement the federal Megan's law, which does not require vehicle information from offenders. Therefore, the Commission finds that this activity is not part and parcel of the federal mandate, and thus, is reimbursable.

---

[56] Title 42 United States Code section 14701 (b)(6) (Exhibit A, p. 1518).

[57] Title 42 United States Code section 14701 (b)(7)(B) (Exhibit A, p. 1518).

[58] 64 Federal Register 572, Exhibit A, page 1580. The Megan's Law federal guidelines also state, "the Act does not require a state to obtain information about a registrant's expected employment when it releases him, but a state may legitimately wish to know if a convicted child molester is seeking or has obtained employment that involves responsibility for the care of children." 64 Federal Register 572 (Exhibit A, pp. 1565-1566). It is sufficient that one provision in the federal law requires the employment information.

Requiring proof of residence verification does implement the federal Megan's law, which states, "procedures shall provide for verification of address at least annually."[59] For sexually violent predators, as defined, registration verification is required every 90 days after the date of the initial release or commencement of parole.[60] And requiring documents to verify the address is de minimis in the context of the mandated activities. Therefore, the Commission finds that this activity is part and parcel of the federal mandate, and thus is not reimbursable.

Requiring a statement from a person without a residence does not implement the federal Megan's law, which makes no mention of offenders without a residence. Thus, this is reimbursable.

Notice of Reduction of Registration Period: This activity requires that convicted sex offenders who were required to register before January 1, 1997, be notified of the reduction in the registration period from 14 days to 5 working days when the offender next re-registers. This is a one-time activity that has already been performed and reimbursed. Therefore, because it is no longer reimbursable, the Commission makes no finding on whether it implements the federal Megan's Law. The Commission does find, however, that because this is a one-time activity, it is no longer reimbursable.

Records Retention: This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years, and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.

The federal Megan's law requires releasing relevant information necessary to protect the public concerning a specific person required to register as a sex offender.[61] However, the federal law does not mention keeping records of persons to whom the information is released. Therefore, the Commission finds that this records retention activity does not implement the federal Megan's Law, and is not part and parcel of the federal mandate, and thus, is reimbursable.

Comments of the Legislative Analyst's Office: As stated above, the LAO criticizes the parameters and guidelines for allowing local law enforcement agencies to claim state reimbursement for "the development of internal policies, procedures, and manuals to implement Megan's Law." This provision appears to allow localities to seek state reimbursement for *all* policies, procedures, and manuals related to Megan's Law, including those that relate to federally mandated aspects of the state law.[62]

---

[59] Title 42 United States Code section 14701 (b)(3)(A). (Exhibit A, p. 1517). The guidelines state, "The particular approach to address verification is a matter of state discretion under the Act." (64 Fed. Reg. 572, Exhibit A, p. 1569).

[60] Title 42 United States Code section 14701 (b)(3)(B). (Exhibit A, p. 1517).

[61] Title 42 United States Code section 14701 (e)(2) (Exhibit A, p. 1519).

[62] <http://www.lao.ca.gov/2003/state_mandates/state_mandates_1203.html> as of June 6, 2005.

"Developing policies, procedures, and manuals" are one-time activities in the original parameters and guidelines.[63] Since the parameters and guidelines were adopted in March 2002, these activities would have already been performed and reimbursed. The Commission finds that any change, if necessary, would be made at the parameters and guidelines phase.

CONCLUSION

The Commission finds, in years in which they are not suspended by the Legislature,[64] that the test claim statutes impose a reimbursable state mandate on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556, for all activities listed in the *Sex Offenders: Disclosure by Law Enforcement Officers (Megan's Law)* Statement of Decision (97-TC-15)[65] except for those that, based on the *San Diego Unified School Dist.* case, implement a federal law and have costs that are, in context, de minimis (except one that is no longer required because it is a one-time activity). The reimbursable activities from the Commission's prior Statement of Decision, with deletions noted in strikeout, are as follows:

- ~~**Violent Crime Information Network:** This activity requires a local law enforcement agency to submit sex offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network (§ 290 (a)(1)(F), Stats. 1998, ch. 929).~~
- **Removal of registration for decriminalized conduct:** This activity requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice. (§ 290 (a)(2)(F)(i)(III), Stats. 1997, ch. 821)
- **Pre-register:** the admitting officer of a local law enforcement agency must pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender. (§ 290 (e)(1)(A-C), Stats. 1997, ch. 821)
- **Contents of registration upon release:** the following related activities are imposed on the registering local law enforcement agency: (§ 290 (e)(2)(A-E))
    - ~~The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the~~

[63] See Exhibit A, page 1867.

[64] This program is suspended in the Fiscal Year 2005-2006 Budget Act, Statutes 2005, chapter 38, Item 8885-295-001, Schedule 3 (d).

[65] See Exhibit A, page 1707.

~~offender's place of employment if that is different from the employer's main address.~~

- The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.
- ~~The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable.~~ If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.[66]

- ~~**Notice of Reduction of Registration Period:** This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next re-registers of the reduction in the registration period was from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual. (§ 290 (l)(1)).~~[67]
- **High-Risk Sex Offenders:** Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.[68] A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.[69]
- **CD-ROM**: the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies must provide the necessary equipment for the public to

---

[66] The parameters and guidelines state, "If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender." (§ 290, subd. (e)(2)(E).) (See Exhibit A, p. 1868).

[67] As stated in the analysis, the Commission makes no finding as to whether this activity implements federal law. Rather, as a one-time activity, the Commission finds that it would already have been performed and reimbursed.

[68] This requirement is currently in section 290.45, subdivision (b)(1)(G)(ii).

[69] This requirement is currently in section 290.45, subdivision (b)(2).

access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium. (§ 290.4 (a)(4)(A)).

- **Records Retention:** a local law enforcement agency must maintain records of persons requesting to view the CD-ROM or other electronic medium for a minimum of five years (§ 290.4 (l)), and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk sex offenders. (§ 290.45 (c), former § 290 (o)).

STATE OF CALIFORNIA *EDMUND G. BROWN JR., Governor*
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

February 3, 2014

Ms. Wendy Watanabe
County of Los Angeles
Auditor-Controller
500 W. Temple Street, Room 525
Los Angeles, CA 90012

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

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Adopted Statement of Decision, Draft Expedited Parameters and Guidelines, and Notice of Hearing**
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO), 08-TC-03
Penal Code Sections 290.3 et al.
County of Los Angeles, Claimant

Dear Ms. Watanabe and Ms. Yaghobyan:

On January 24, 2014, the Commission on State Mandates adopted the statement of decision partially approving the above-entitled matter. State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

- **Draft Expedited Parameters and Guidelines**. Pursuant to California Code of Regulations, title 2, section 1183.12, the Commission staff is expediting the parameters and guidelines process by enclosing draft parameters and guidelines to assist the claimant. The proposed reimbursable activities are limited to those approved in the statement of decision by the Commission.

- **Claimant's Review of Draft Parameters and Guidelines**. Pursuant to California Code of Regulations, title 2, sections 1183.12(b) and (c), the successful test claimant may file modifications and comments on the proposal with Commission staff by **February 24, 2014**. The claimant may also propose a reasonable reimbursement methodology pursuant to Government Code section 17518.5 and California Code of Regulations, title 2, section 1183.13.

  State Agencies and Interested Parties Comments. State agencies and interested parties may submit recommendations and comments by **February 17, 2014**. (Cal. Code Regs., tit. 2, § 1183.11(d).) State agencies and interested parties may also submit recommendations and comments within 15 days of service of the claimant's modifications and comments. (Cal. Code Regs., tit. 2, § 1183.12(d).)

Claimant Rebuttals to State Agency and Interested Party Comments. The claimant and other interested parties may submit written rebuttals within 15 days of service of state agency and interested party modifications and comments. (Cal. Code Regs., tit. 2, § 1183.11(f).)

- **Adoption of Parameters and Guidelines**. After review of the draft expedited parameters and guidelines and all proposed modifications and comments, Commission staff will prepare the proposed parameters and guidelines and statement of decision and recommend adoption by the Commission.

Reasonable Reimbursement Methodology and Statewide Estimate of Costs

- **Test Claimant and Department of Finance Submission of Letter of Intent**. Within 30 days of the Commission's adoption of a statement of decision on a test claim, the test claimant(s) and the Department of Finance may notify the executive director of the Commission in writing of their intent to follow the process described in Government Code sections 17557.1─17557.2 and section 1183.30 of the Commission's regulations to develop a *reasonable reimbursement methodology* and *statewide estimate of costs* for the initial claiming period and budget year for reimbursement of costs mandated by the state. The letter of intent shall include the date on which the test claimant and the Department of Finance will submit a plan to ensure that costs from a representative sample of eligible claimants are considered in the development of a reasonable reimbursement methodology.

- **Test Claimant and Department of Finance Submission of Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** Pursuant to the plan, the test claimant and the Department of Finance shall submit the *Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs* to the Commission. See Government Code section 17557.1 for guidance in preparing and filing a timely submission.

- **Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** Upon receipt of the jointly developed proposals, Commission staff shall notify all recipients that they shall have the opportunity to review and provide written comments or recommendations concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within fifteen (15) days of service. The test claimant and Department of Finance may submit written rebuttals to Commission staff.

- **Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs.** At least ten days prior to the next hearing, Commission staff shall issue review comments and a staff recommendation on whether the Commission should approve the draft reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

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. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for

instructions on electronic filing. (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(c)(1) of the Commission's regulations.

The parameters and guidelines for this matter are tentatively set for hearing on **March 28, 2014**.

Please contact Jason Hone at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Statutes 2006, Chapter 336 (SB 1178), amending Section 1202.8, and adding Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes 2006, Chapter 337 (SB 1128), amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, and adding Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f of the Penal Code; Statutes 2006, Chapter 886 (SB 1849), amending Sections, 290.46, 1202.8, repealing Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes 2007, Chapter 579 (SB 172) amending Sections 290.04, 290.05, 290.3, and 1202.7, adding Sections 290.011, 290.012, and repealing and adding Section 290 to the Penal Code; and California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008 Filed on January 22, 2009 By County of Los Angeles, Claimant.	Case No.: 08-TC-03 *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 24, 2014*) (*Served February 3, 2014*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 24, 2014. Hasmik Yaghobyan appeared for the County of Los Angeles. Michael Byrne and Susan Geanacou appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the proposed statement of decision to partially approve the test claim at the hearing by a vote of 7 to 0.

Summary of the Findings

This test claim alleges reimbursable state-mandated increased costs resulting from additions and amendments made to the Penal Code by the Sex Offender Punishment, Control, and Containment Act of 2006[1] and the Sex Offender Registration Act.[2,3] In addition, the test claim alleges that the SARATSO Review Committee Notification, issued February 1, 2008, imposes a reimbursable state mandate.

The test claim statutes generally provide for the establishment of a statewide system of risk assessment to be applied to convicted sex offenders. The statutes provide for a committee to select an appropriate risk assessment tool for each population (adult males, adult females, juvenile males, and juvenile females), which will be known as the State Authorized Risk Assessment Tool for Sex Offenders, or SARATSO. The test claim statutes require a statewide committee to develop a training program for those who will administer the SARATSO assessments, and require those persons in turn to be trained at least every two years. Then, when a person is convicted of an offense requiring registration as a sex offender, the SARATSO is utilized to assess the risk of that person committing future sex crimes, so that the higher- risk offenders can be more adequately supervised while on probation or parole. The test claim statutes provide for electronic monitoring of the highest-risk offenders, as well as "intensive and specialized probation supervision." And finally, the test claim statutes require probation departments to report to statewide authorities regarding the effectiveness of continuous monitoring, and the costs of monitoring weighed against the results in reducing recidivism, and require all relevant agencies to grant reciprocal access to records and information pertaining to a sex offender subject to SARATSO assessment.

The test claim was filed on January 22, 2009, alleging reimbursable state-mandated increased costs for statutes enacted as early as September 20, 2006. Normally, a statute with an effective date of September 20, 2006 would fall outside the period of reimbursement for a January 2009 test claim filing, pursuant to Government Code section 17551 and, thus, outside of the Commission's jurisdiction. Some of the mandated activities, however, were not required to be performed until July 1, 2008, and certain others, primarily those related to training, could not have been performed until issuance of the alleged executive order on February 1, 2008. In addition, the claimant declares under penalty of perjury that the Los Angeles County *probation department* first incurred reimbursable state-mandated increased costs for State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) related activities in February 2008. No such declaration was made on behalf of local law enforcement agencies or district attorneys, which are also affected by the test claim statutes. Therefore, the Commission may exercise jurisdiction over the 2006 test claim statutes, but jurisdiction is limited to consideration only of activities imposed on county probation departments, and those activities that could not have been

[1] Statutes 2006, chapter 337 (SB 1128), and amendments made by Statutes 2006, chapter 886 (AB 1849).

[2] Statutes 2007, chapter 579 (SB 172).

[3] Statutes 2006, chapter 336 (SB 1178) is also pled, but three of the code sections addressed in that statute were repealed prior to this test claim being filed, and the other two were subsequently amended. Therefore, the requirements of Statutes 2006, chapter 336 (SB 1178) are addressed as amended by Statutes 2007, chapter 579 (SB 172).

performed by other local agencies prior to issuance of the executive order. Section 290.08, as added, is denied on this ground, and jurisdiction over section 290.07 is limited to activities required of county probation departments, based on the claimant's declaration, as discussed.

In addition, many of the alleged requirements of the test claim statutes are imposed on state-level agencies and entities, such as the creation of the SARATSO Review Committee and the SARATSO Training Committee; these requirements do not impose any mandated activities or costs on local agencies. Other alleged requirements of the test claim statutes are not mandated by the plain language, such as the Legislature's expression of its "intent" that probation departments make efforts to engage transient persons who are required to register as sex offenders in treatment. And finally, some of the activities required of local agencies are excluded from reimbursement by operation of article XIII B, section 6(a)(2) and Government Code section 17556(g), which prohibits a finding of costs mandated by the state for statutes that create or eliminate a crime or infraction, or change the penalty for a crime or infraction.

Based on the analysis herein, the Commission finds that the test claim statutes and executive order impose a partially reimbursable state-mandated new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

For county probation departments and authorized local law enforcement agencies, beginning February 1, 2008, to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;[4] and,

2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.[5]

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.[6]

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that

[4] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[5] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[6] Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected as set forth in 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.[7]

Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.[8]

   Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.

4. Beginning January 1, 2010:

   (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;

   (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;

   (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and

   (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

   Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.[9]

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.[10]

---

[7] Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[8] Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

[9] Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

[10] Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.[11]

   This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

COMMISSION FINDINGS

I. Chronology

01/22/2009	Claimant, County of Los Angeles (County), filed test claim *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)* (08-TC-03) with the Commission on State Mandates (Commission).[12]
02/19/2009	Commission staff issued a completeness review letter for the test claim and requested comments from state agencies.
03/25/2009	Department of Finance (Finance) submitted comments on the test claim.[13]
06/01/2009	The County submitted comments in rebuttal to Finance's comments.[14]
10/11/2013	Commission staff issued a draft staff analysis and proposed statement of decision on the test claim.[15]
10/25/2013	The County requested an extension of time to file comments and postponement of the hearing, which was granted for good cause.
12/02/2013	The Department of Finance submitted comments on the draft staff analysis.[16]

II. Introduction

This test claim alleges reimbursable state-mandated increased costs resulting from additions and amendments made to the Penal Code by the Sex Offender Punishment, Control, and Containment Act of 2006 (Stats. 2006, ch. 337 (SB 1128)); Statutes 2006, chapter 886 (AB 1849); and the Sex Offender Registration Act (Penal Code §§ 290 to 290.023, inclusive, as added by Stats. 2007, ch. 579 (SB 172)). In addition, the test claim alleges a reimbursable state mandate imposed by the SARATSO Review Committee Notification, issued February 1, 2008, via the Department of Mental Health (DMH) website.

The test claim statutes provide that every person who is required to register as a sex offender, based on conviction for one of several enumerated offenses, shall be subject to an assessment of the person's risk of recidivism using the State Authorized Risk Assessment Tool for Sex Offenders, or SARATSO. The statutes require the creation of a Review Committee to select an

[11] Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

[12] Exhibits A-D, Test Claim, Volumes I-IV.

[13] Exhibit E, Department of Finance Comments on Test Claim.

[14] Exhibit F, County of Los Angeles Rebuttal Comments.

[15] Exhibit G, Draft Staff Analysis.

[16] Exhibit H, Department of Finance Comments on Draft Staff Analysis.

appropriate SARATSO for each population of offenders (adults, juveniles, males, females), and provide that if a SARATSO is not selected for a given population by the Review Committee, "no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population."[17] The statutes provide for a SARATSO Training Committee to develop a training program for persons authorized to administer the SARATSO, and require any person who administers the SARATSO to receive training no less frequently than every two years.[18] The statutes require DMH, CDCR, and local probation departments to administer the SARATSO to persons under their charge, as specified.[19] In addition, the statutes require that probation officers:

1. Include the results of the SARATSO evaluation in the presentencing report required pursuant to section 1203, and the report made to CDCR pursuant to section 1203c, if applicable,[20] and,
2. Compile a Facts of Offense Sheet for every person convicted of a registerable sex offense, and include that document in the presentencing report.[21]

The statutes provide that any person authorized by statute to administer the SARATSO shall be granted access to all relevant records pertaining to a registered sex offender, and that a district attorney shall retain records relating to a person convicted of a registerable offense for 75 years.[22] The statutes require probation departments to place probationers at high risk of recidivism on intensive and specialized probation, including more frequent reporting to designated officers,[23] and to provide for continuous electronic monitoring of those high risk probationers.[24] In addition, the statutes require each probation department to report to the Corrections Standard Authority all relevant statistics regarding the effectiveness of continuous electronic monitoring.[25] And, the statutes provide that it is the Legislature's intent that probation departments make efforts to engage in treatment transient persons who are required to register under section 290.[26] Finally, the alleged executive order notifies the relevant departments of the SARATSO Review Committee's selection of an appropriate risk assessment tool for adult males and juvenile males, and thereby triggers the requirement to conduct assessments. The executive order also invites the relevant agencies and departments to designate persons to attend training-

[17] Penal Code section 290.04 (added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

[18] Penal Code section 290.05 (added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

[19] Penal Code section 290.06 (added, Stats. 2006, ch. 337 (SB 1128)).

[20] Penal Code sections 290.06; 1203; 1203c (added or amended, Stats. 2006, ch. 337 (SB 1128)).

[21] Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

[22] Penal Code sections 290.07; 290.08 (added, Stats. 2006, ch. 337 (SB 1128)).

[23] Penal Code section 1203f (added, Stats. 2006, ch. 337 (SB 1128)).

[24] Penal Code section 1202.8 (amended, Stats. 2006, ch. 337 (SB 1128)).

[25] *Ibid.*

[26] Penal Code section 1202.7 (amended, Stats. 2007, ch. 579 (SB 172)).

for-trainers in winter or spring of 2008, so that they may train the necessary personnel in their respective agencies.

III. Positions of the Parties

Claimant's Position

The County alleges that the test claim statutes and SARATSO Review Committee Notification constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The County is seeking reimbursement for the following activities:

- Training to administer the SARATSO in accordance with section 290.05.
- Administering the SARATSO in accordance with section 290.06.
- Including the SARATSO in presentencing reports and reports to the Department of Corrections and Rehabilitation pursuant to sections 1203 and 1203c.
- Compiling a Facts of Offense Sheet, including the results of the SARATSO evaluation.
- Continuously electronically monitoring high risk sex offenders, as determined by the SARATSO, pursuant to section 1202.8.
- Providing access to relevant records to any person authorized to administer the SARATSO pursuant to section 290.07.
- Retaining records of all convictions for registerable sex offenses for 75 years pursuant to section 290.08.
- Engaging transient sex offenders in treatment pursuant to section 1202.7.[27]

The County alleges that their costs "for Los Angeles County's SARATSO program…are far in excess of $1,000 per annum."[28] Specifically, the County alleges a "total cost for initial training" of $80,884 for the County and $635,926 statewide.[29] In addition, the County alleges total costs for investigation and researching records of $80,974 for the County and $304,239 statewide.[30] The County also alleges the total cost for performing SARATSO assessments of $213,039 for the County and $361,302 statewide.[31] The County further alleges total costs for supervision (including intensive and specialized probation supervision and continuous electronic monitoring) of $842,582 for the County and $4,124,906 statewide.[32] Finally, the County alleges that "[c]ounty probation officers began incurring SARATSO costs during February 2008 and, so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553."[33]

---

[27] Exhibit A, Test Claim, at pp. 11; 13; 23-24; 26-27; and 30-32.

[28] Exhibit A, Test Claim, at p. 43.

[29] Exhibit A, Test Claim, at p. 34.

[30] Exhibit A, Test Claim, at p. 35.

[31] Exhibit A, Test Claim, at p. 36.

[32] Exhibit A, Test Claim, at p. 38.

[33] Exhibit A, Test Claim, at p. 42.

Department of Finance Position

Finance states that the statutes and the executive order "could result in a reimbursable state mandate; however, the reimbursement may be limited based on the statutory exception specified in subdivision (g) of Government Code Section 17556 and pending litigation."[34] Finance contends that the results of the SARATSO evaluation are "required for the court to make a determination on the probation conditions of a convicted sex offender," and therefore "the results affect the sex offender's penalty after he/she has been convicted of the crime," and, thus, this activity is not eligible for reimbursement under Government Code section 17556(g).[35] Finance further contends that "prior law required county probation offices to perform investigative duties to complete reporting requirements under the Penal Code Section 1203," and that therefore these activities are not new.[36] In addition, Finance argues that engaging transient sex offenders in treatment is not a new activity imposed on the county probation offices.[37] Finance concludes that "the Act and the executive order may have resulted in a partial reimbursable state mandate for some of the activities identified by the claimant."[38]

In comments on the draft staff analysis, Finance concurs with the draft staff analysis recommending partial approval of the test claim.[39]

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.
>
> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.[40]

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local governments, which are 'ill

---

[34] Exhibit E, Department of Finance Comments, at p. 1.

[35] *Ibid.*

[36] *Id*, at p. 2.

[37] *Ibid.*

[38] *Ibid.*

[39] Exhibit H, Department of Finance Comments on Draft Staff Analysis.

[40] California Constitution, article XIII B, section 6 (adopted November 4, 1979).

equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[41] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[42] Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[43]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[44]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[45]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[46]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[47] The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[48] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[49]

---

[41] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[42] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[43] *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist*.) (2004) 33 Cal.4th 859, 874.

[44] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.)

[45] *San Diego Unified School Dist*., *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[46] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[47] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[48] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

[49] *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

A. The Commission Has Jurisdiction Over the 2006 Test Claim Statutes, as Specified, Because Claimant First Incurred Costs In February 2008.

Government Code section 17551(c) establishes the statute of limitations for the filing of test claims as follows:

> Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

Section 1183(c) of the Commission's regulations provides, accordingly, that "'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[50]

The effective date of Statutes 2006, chapter 336 (SB 1178), and Statutes 2006, chapter 337 (SB 1128), both enacted as urgency measures, is September 20, 2006. Statutes 2006, chapter 886 (AB 1849) was enacted as urgency legislation September 30, 2006. Therefore, "within 12 months," as defined in the Commission's regulations would be by June 30, 2008. This test claim was filed on January 22, 2009, several months beyond the statute of limitations provided in section 17551 and section 1183 of the Commission's regulations, based on the effective date of the test claim statutes.

However, some activities required by the test claim statutes, including conducting SARATSO assessments, were not required to be performed until July 1, 2008, and the claimant has, accordingly, declared under penalty of perjury that *"[c]ounty probation officers* began incurring SARATSO costs during February 2008 and, [*sic*] so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553."[51] There is no evidence in the record to rebut the County's declaration with regard to costs first incurred by the probation department in February 2008.

Moreover, training activities, and any activities that rely on being first trained, could not have been performed by any local agency prior to February 1, 2008, when the alleged executive order was issued. The SARATSO Review Committee Notification identified the SARATSO for certain populations and invited local agencies to designate personnel to receive training and begin to train others to meet the July 1, 2008 implementation date. The plain language of the statutes requires that local agency personnel administering the SARATSO receive training to administer the SARATSO, and the plain language of the alleged executive order makes clear that probation departments and authorized local law enforcement agencies were expected to begin training activities on or after February 1, 2008. Therefore, the statute of limitations is satisfied as to activities imposed by the test claim statutes on probation departments, and for the training activities of probation departments and authorized local law enforcement agencies that could not have been performed prior to the issuance of the executive order inviting the local agencies to attend training on the identified SARATSO. Section 290.08, as added by Statutes 2006, chapter 337, does not impose any requirements on probation departments, and does not rely on the

[50] Code of Regulations, title 2, section 1183 (Register 2003, No. 17).

[51] Exhibit A, Test Claim, at p. 42.

issuance of the alleged executive order, and therefore the Commission declines to take jurisdiction. Section 290.07 is addressed below only with respect to probation departments.

Based on the foregoing, the Commission does not have jurisdiction over Statutes 2006, chapters 336, 337, and 886 (SB 1178; SB 1128; AB 1849), except those activities required of county probation departments, and those activities that could not be performed prior to the issuance of the alleged executive order on February 1, 2008.

B. Some of the Test Claim Statutes, Triggered by the Executive Order, Impose New Required Activities on Local Agencies.

The alleged executive order, and each code section alleged in the test claim, as added or amended by Statutes 2006, chapters 336, 337, and 886; and Statutes 2007, chapter 579, is addressed in turn, below.

1. Penal Code sections 290.3, 290.46, 1203.6, and 1203.075 do not impose any requirements on local agencies.

Penal Code sections 290.3, 290.46, 1203.6, and 1203.075 are included in the caption in Box 4 of the test claim form, but are not addressed in the claimant's narrative. Moreover, the plain language of these sections does not impose any new activities on local government, and therefore these sections, as amended, are denied.

2. Penal Code section 290.03, as added by Statutes 2006, chapter 337 (SB 1128) is a statement of legislative intent, and does not impose any state-mandated activities on local agencies.

Section 290.03 was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and provides the Legislature's findings and declarations regarding the SARATSO program. The County asserts, however, that section 290.03 provides for the duties of county probation officers to "identify, assess, monitor and contain known sex offenders."[52] Section 290.03 states the following:

> (a) The Legislature finds and declares that a comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities is necessary to enhance public safety and reduce the risk of recidivism posed by these offenders. The Legislature further affirms and incorporates the following findings and declarations, previously reflected in its enactment of "Megan's Law":
>
> ¶…¶
>
> (b) In enacting the Sex Offender Punishment, Control, and Containment Act of 2006, the Legislature hereby creates a standardized, statewide system to identify, assess, monitor and contain known sex offenders for the purpose of reducing the risk of recidivism posed by these offenders, thereby protecting victims and potential victims from future harm.[53]

[52] Exhibit A, Test Claim, at p. 13.

[53] Statutes 2006, chapter 337, section 12.

The plain language of section 290.03 does not impose any requirements on local agencies; it merely expresses the Legislature's findings and intent. There is nothing in section 290.03 that expressly directs or requires local agencies to perform any activities. Moreover, the County acknowledges that the activities required are "explicitly defined under other penal code sections included herein as the test claim legislation."[54]

Based on the foregoing, the Commission finds that section 290.03 does not impose any state-mandated activities on local agencies.

3. Penal Code section 290.04, as added by Statutes 2006, chapter 337 (SB 1128), and amended by Statutes 2007, chapter 579 (SB 172) establishes the SARATSO Review Committee, and identifies the default SARATSO to be used for adult males, but does not impose any state-mandated activities on local agencies.

Section 290.04 was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and amended by Statutes 2007, chapter 579 (SB 172).[55] Section 290.04 provides that the "sex offender risk assessment tools authorized by this section…shall be known, with respect to each population, as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO)."[56] The section provides that "[i]f a SARATSO has not been selected for a given population pursuant to this section, *no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population*."[57] The section further provides that every person required to register as a sex offender "shall be subject to assessment with the SARATSO." The section provides that a SARATSO Review Committee shall be established to ensure that the SARATSO for each population reflects reliable, objective and well-established protocols for predicting risk of recidivism. The SARATSO Review Committee, pursuant to section 290.04, shall be comprised of a representative of DMH, "in consultation with a representative of the Department of Corrections and Rehabilitation and a representative of the Attorney General's office." The section provides that "[c]ommencing January 1, 2007, the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale," and that "[o]n or before January 1, 2008, the SARATSO Review Committee shall determine whether the STATIC-99 should be supplemented with an actuarial instrument…or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool [for adult male sex offenders]." The section further provides that the Review Committee shall research risk assessment tools for adult females, and for male and female juveniles, to determine if there is an appropriate risk assessment tool available. And finally, the section provides that the Review Committee "shall periodically evaluate the SARATSO for each specified population," and may change the selected tool by unanimous agreement.[58]

---

[54] *Ibid*.

[55] An alternate version of sections 290.04 through 290.06 was added to the Penal Code by Statutes 2006, chapter 336 (SB 1178), and repealed by Statutes 2006, chapter 886 (AB 1849); the version added by Statutes 2006, chapter 337 (SB 1128) therefore prevails.

[56] Penal Code section 290.04 (added, Stats. 2006, ch. 337, § 13 (SB 1128)).

[57] *Ibid* [emphasis added].

[58] Penal Code section 290.04 (as added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

The plain language of this section establishes the SARATSO Review Committee, and then defines the SARATSO for adult males, and directs the SARATSO Review Committee to examine whether a SARATSO can be adopted for other populations. The section states that persons required to register "shall be subject to" assessment, but does not impose an express requirement on local agencies to perform those assessments. Importantly, the section provides that if a SARATSO has not been selected for a given population under this section, no duty to administer the SARATSO elsewhere in the code shall apply with respect to that population.

Based on the foregoing, the Commission finds that Penal Code section 290.04, as added and amended in 2006 and 2007, does not impose any state-mandated activities on local agencies.

4. Penal Code section 290.05, as added by Statutes 2006, chapter 337 (SB 1128) and amended by Statutes 2007, chapter 579 (SB 172) imposes new training requirements for probation departments and authorized local law enforcement agencies required to conduct SARATSO evaluations.

Section 290.05 provides as follows:

> (a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General's Office, and a representative of the Chief Probation Officers of California.
>
> (b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.
>
> ¶…¶
>
> (d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.
>
> (e) The SARATSO may be performed for purposes authorized by statute only by persons trained pursuant to this section.[59]

This section primarily addresses responsibilities of state-level agencies to participate in the SARATSO Training Committee and develop a training program and standards for training of probation and law enforcement personnel. But in addition, activities required of county probation departments and authorized local law enforcement agencies include designating

[59] Penal Code section 290.05 (as added, Stats. 2006, ch. 337, section 14; amended, Stats. 2007, ch. 579 (SB 172)).

persons to attend training and to train others within the organization, and ensuring that all persons administering the SARATSO within the organization receive training no less frequently than every two years in accordance with section 290.05.

The alleged executive order, the SARATSO Review Committee Notification, *issued February 1, 2008*, provides, in pertinent part:

> **Implementation and Training:**
>
> On July 1, 2008, the Static-99 is mandated for use by the DMH, CDCR Parole and County Probation. Training-for-Trainers sessions will take place in Winter/Spring of 2008.
>
> This training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, CDCR, DMH, County Probation Departments, and authorized local law enforcement agencies shall designate the appropriate persons within their organizations to attend training and, as authorized by the department, to train others within their organizations. Any person who administers the SARATSO shall receive training no less frequently than every two years.
>
> The time factor is immediate. All agencies need to be fully trained for the July 1, 2008 implementation date.[60]

These activities are new, with respect to prior law: because no SARATSO previously existed, there was no need to train to administer the SARATSO. Moreover, training activities could not be implemented prior to 2008 because the training program was not prepared until that time.

Based on the foregoing, the Commission finds that Penal Code section 290.05, as added by Statutes 2006, chapter 337 (SB 1128) and amended by Statutes 2007, chapter 579 (SB 172) requires probation departments and authorized local law enforcement agencies, beginning February 1, 2008 to (1) designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations; and (2) ensure that persons administering the SARATSO receive training no less frequently than every two years.

5. Penal Code sections 290.06 and 1203, as added or amended by Statutes 2006, chapter 337 (SB 1128), and triggered by the alleged Executive Order, SARATSO Review Committee Notification, February 1, 2008, impose new required activities on local agencies to administer the SARATSO, as set forth under 290.04, and to include the results in presentencing reports, as specified.

Section 290.06 provides that, "[e]ffective on or before July 1, 2008, the SARATSO, as set forth in section 290.04, shall be administered as follows:"

> (a) (1) The Department of Corrections and Rehabilitation shall assess every eligible person who is incarcerated in state prison. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to release from incarceration.

[60] Exhibit D, Test Claim, Volume IV, at pp. 839-840.

(2) The department shall assess every eligible person who is on parole. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to termination of parole.

(3) The Department of Mental Health shall assess every eligible person who is committed to that department. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to release from commitment.

(4) Each probation department shall assess every eligible person for whom it prepares a report pursuant to Section 1203.

(5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4). The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.

(b) If a person required to be assessed pursuant to subdivision (a) was assessed pursuant to that subdivision within the previous five years, a reassessment is permissible but not required.

(c) The SARATSO Review Committee established pursuant to Section 290.04, in consultation with local law enforcement agencies, shall establish a plan and a schedule for assessing eligible persons not assessed pursuant to subdivision (a). The plan shall provide for adult males to be assessed on or before January 1, 2012, and for females and juveniles to be assessed on or before January 1, 2013, and it shall give priority to assessing those persons most recently convicted of an offense requiring registration as a sex offender. On or before January 15, 2008, the committee shall introduce legislation to implement the plan.

(d) On or before January 1, 2008, the SARATSO Review Committee shall research the appropriateness and feasibility of providing a means by which an eligible person subject to assessment may, at his or her own expense, be assessed with the SARATSO by a governmental entity prior to his or her scheduled assessment. If the committee unanimously agrees that such a process is appropriate and feasible, it shall advise the Governor and the Legislature of the selected tool, and it shall post its decision on the Department of Corrections and Rehabilitation's Internet Web site. Sixty days after the decision is posted, the established process shall become effective.

(e) For purposes of this section, "eligible person" means a person who was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 and who has not been assessed with the SARATSO within the previous five years.

The alleged executive order, the SARATSO Review Committee Notification, issued February 1, 2008, identifies the appropriate SARATSO for adult male offenders and juvenile male offenders only, as follows:

> **For adults, the Committee has selected the Static-99** designed and cross-validated by Dr. Karl Hanson and Dr. David Thornton. This instrument is currently in use by CDCR as a tool to designate a parolee as a High Risk Sex

> Offender (HRSO). This instrument will become the only statewide risk assessment tool for adult males, which is mandated to be used by CDCR to assess every eligible inmate prior to parole and every eligible inmate on parole. This tool is further mandated for use by DMH to assess every eligible individual prior to release and by Probation for every eligible individual for whom there is a probation report. (Pen. Code,§ 290.06)
>
> **For juveniles the Committee has selected the J-SORAT II** [*sic*] designed and cross-validated by Dr. Douglas Epperson. This instrument will become the only state-authorized risk assessment tool for juveniles, which is mandated to be used by probation; when assessing a juvenile sex offender at adjudication, and by CDCR/DJJ both prior to release from DJJ and while on supervision. (Pen. Code, §290.06.)
>
> **For female offenders the Committee has found that there currently is no risk assessment tool for this population** that has been scientifically researched and validated. Therefore, the Committee does not have a recommendation. [61]

The Commission notes that section 290.04, as discussed above, provides that "[i]f a SARATSO has not been selected for a given population pursuant to this section, *no duty to administer the SARATSO elsewhere in this code shall apply* with respect to that population."[62] Therefore, because the SARATSO Review Committee Notification issued February 1, 2008 does not identify an appropriate risk assessment tool for adult female sex offenders or juvenile female sex offenders, the duty to administer the SARATSO arising from section 290.06 and the alleged executive order is limited to adult male offenders and juvenile male offenders. Consequently, all other requirements of reporting the SARATSO results, as described below (e.g., section 1203 presentencing reports) are *limited to* adult male offenders and juvenile male offenders, until or unless a SARATSO risk assessment device is identified by the SARATSO Review Committee pursuant to section 290.04.

In addition, as discussed above, section 290.04 provides that the Review Committee "shall periodically review the SARATSO," and may change its selection of the tool for a given population. Accordingly, the Review Committee has, since February 1, 2008, revised its findings regarding the appropriate risk assessment tool at least twice: in spring 2011 the Committee added two additional dynamic assessment tools to be used in conjunction with the STATIC-99; and in September 2013 the Committee adopted a new dynamic assessment tool, "the Stable-2007/Acute-2007."[63] Therefore, all requirements of administering SARATSO evaluations and reporting results describe the SARATSO, "as set forth in Section 290.04," which necessarily includes any later action of the SARATSO Review Committee to add to or change the risk assessment tools selected for a given population.

---

[61] Exhibit D, Test Claim Volume IV, at p. 839.

[62] Penal Code section 290.04 (added by Stats. 2006, ch. 337 (SB 1128); amended by Stats. 2007, ch. 579 (SB 172)) [emphasis added].

[63] Exhibit X, SARATSO Review and Training Committees Official Publication, "Sex Offender Risk Assessment in California." See also, Exhibit X, SARATSO Review and Training Committees' website main page: http://www.saratso.org/.

Section 1203, referenced in section 290.06, above, requires that the results of the SARATSO evaluation be included in the report made to the court under section 1203. *Prior to the amendments made by Statutes 2006, chapter 337* (SB 1128), section 1203(b)(1) provided:

> Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to *investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person*, which may be considered either in aggravation or mitigation of the punishment.[64]

Prior law further provided that once the matter is referred to a probation officer, that officer is required to "immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted."[65] Statutes 2006, chapter 337 (SB 1128) *added to section 1203 the following*:

> If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer's report *shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive*, if applicable.[66]

Section 290.06, above, thus provides that each probation department shall assess every eligible person for whom it prepares a presentencing report pursuant to section 1203, and every eligible person under its supervision prior to the termination of probation.[67] Section 1203, in turn, provides that the results of that assessment shall be included in the presentencing report prepared for the court. And the SARATSO Review Committee Notification, issued February 1, 2008, coupled with the statement in section 290.04 that no duty to administer the SARATSO elsewhere in the code shall apply unless a SARATSO is selected as set forth in section 290.04, limits the requirement to assess to adult male and juvenile male offenders only.

The County argues that identification of the STATIC-99 and the J-SORRAT II as the appropriate risk assessment tools for adult male and juvenile male populations, respectively, triggers certain investigative requirements necessary to score the SARATSO and thereby assess risk. The specific information necessary to complete the SARATSO is not found in any of the statutes pled, or the executive order; the information necessary to complete and score the SARATSO can only be determined by reference to the SARATSO risk assessment tool selected for a given population by the Review Committee. In addition, a new or alternative SARATSO may be selected by the Review Committee when, in its discretion, the Committee finds it appropriate to do so, and therefore the scope of investigation necessary may change as the selected risk assessment tool changes. Moreover, some investigative activities that might be required to

---

[64] Penal Code section 1203(b)(1) (as amended, Stats. 1996, ch. 719 (AB 893)) [emphasis added].

[65] Penal Code section 1203(b)(2) (as amended, Stats. 1996, ch. 719 (AB 893)).

[66] Penal Code section 1203(b)(2)(C) (Stats. 2006, ch. 337 (SB 1128)) [emphasis added].

[67] Statutes 2006, chapter 337, section 15 (SB 1128).

prepare a SARATSO are not new: section 1203 previously required a presentencing report for all felony convictions, and some of the same information is required to score the SARATSO. For example, the activities required under prior law in section 1203 to "investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person" are not new, and the prior history and record of the person comes into play in scoring the SARATSO.[68]

The County, however, cites to the SARATSO training manual, published by DMH, at page 714 of the test claim, to demonstrate that some of the information required to score the STATIC-99 would not be immediately available to law enforcement, and possibly not available to the courts and, thus, an investigation is necessary to complete the assessment. To illustrate: the Manual states that one of the items required to score the STATIC-99 is whether the individual ever lived with an intimate partner "continuously, for at least two years." In addition, the manual suggests that "self-reporting" may be sufficient for some of the information required, which presumes that an interview with the defendant is expected, prior to or in lieu of an exhaustive search of law enforcement and court records. The requirement in statute is that the probation departments assess eligible individuals using the SARATSO and report the results in a pre-sentencing report to the court, and those required activities are new. The plain language of the statute does not require probation departments to conduct an investigation to complete the assessment. Therefore, the scope of investigation necessary to complete and score the SARATSO, as addressed in the training manual, may be considered reasonably necessary to comply with the mandated activity to complete the assessment and provide a report to the court.[69] That argument, however, may be made when adopting parameters and guidelines and will necessitate substantial evidence in the record demonstrating that the information required to complete the SARATSO is not readily available to the probation officer in other, previously required reports. Eligible claimants will be required to establish that the alleged activities are "reasonably necessary for the performance of the state-mandated program," within the meaning of section 17557, based on substantial evidence in the record, to have them included as reasonably necessary activities in the parameters and guidelines.

Based on the foregoing analysis, the Commission finds that sections 290.06 and 1203, and the SARATSO Review Committee Notification issued February 1, 2008 impose new required activities on probation departments to (1) assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203; (2) assess, using the SARATSO, as set forth in section 290.04, every eligible person under the department's supervision who was not assessed pursuant to a presentencing report prior to the termination of probation but no later than January 1, 2010; and (3) if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing, include the results of the SARATSO assessment in the presentencing report made to the court.[70] The activity of preparing the presentencing report under section 1203 is not new or reimbursable; only the *incremental*

[68] See Exhibit D, Test Claim, Vol. IV at pp. 709-714.

[69] See Exhibit D, Test Claim, Vol. IV at pp. 709-714.

[70] Penal Code section 1203 (as amended by Stats. 2006, ch. 337 (SB 1128)).

increase in service to include the results of the SARATSO in the presentencing report required under section 1203 is new.

6. Penal Code section 1203c, as amended by Statutes 2006, chapter 337 (SB 1128) imposes new required activities on county probation departments to include the results of the SARATSO, if applicable, in the report required pursuant to section 1203c.

Prior section 1203c provided that "whenever a person is committed to an institution under the jurisdiction of the Department of Corrections, whether probation has been applied for or not, or granted and revoked," a probation officer of the county in which the person was convicted is required to send to the Department of Corrections [and Rehabilitation] a report on the "circumstances surrounding the offense and the prior record and history of the defendant."[71] As amended by Statutes 2006, chapter 337 (SB 1128), section 1203c now also requires:

> If the person is being committed to the jurisdiction of the department for a conviction of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer shall include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.[72]

The plain language of section 1203c thus requires that the results of the SARATSO evaluation be included in the report made for CDCR at the time the person is committed to the jurisdiction of the department. The report was required under prior law, as explained above, but inclusion of the SARATSO evaluation is a new mandated activity. However, as discussed above, section 290.04 provides that if a SARATSO has not been selected by the Review Committee for a given population, "no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population." Therefore, because the SARATSO Review Committee Notification did not identify a SARATSO for female offenders, the requirements of section 1203c are limited to adult male and juvenile male offenders.

Based on the foregoing, the Commission finds that section 1203c imposes a new required activity on local probation departments, whenever a person is committed to the jurisdiction of CDCR for a conviction of an offense that requires him or her to register as a sex offender, to include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable.[73] This activity does not include preparing the report under section 1203c.

7. Penal Code section 1203e, added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local agencies to compile a Facts of Offense Sheet, to be included in the presentencing report, for every person convicted of an offense requiring registration under Penal Code section 290, and to include the results of the SARATSO in the Facts of Offense Sheet.

Section 1203e was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and provides as follows:

---

[71] Penal Code section 1203c (as amended by Statutes 1963, chapter 1785).

[72] Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)).

[73] Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)).

(a) Commencing June 1, 2010, the probation department shall compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is referred to the department pursuant to Section 1203. The Facts of Offense Sheet shall contain the following information concerning the offender: name; CII number; criminal history, including all arrests and convictions for any registerable sex offenses or any violent offense; circumstances of the offense for which registration is required, including, but not limited to, weapons used and victim pattern; and results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Section 290.04, if required. The Facts of Offense Sheet shall be included in the probation officer's report.

(b) The defendant may move the court to correct the Facts of Offense Sheet. Any corrections to that sheet shall be made consistent with procedures set forth in Section 1204.

(c) The probation officer shall send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction, and it shall be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. The Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site maintained pursuant to Section 290.46, and shall be accessible only to law enforcement.

(d) If the registered sex offender is sentenced to a period of incarceration, at either the state prison or a county jail, the Facts of Offense Sheet shall be sent by the Department of Corrections and Rehabilitation or the county sheriff to the registering law enforcement agency in the jurisdiction where the registered sex offender will be paroled or will live on release, within three days of the person's release. If the registered sex offender is committed to the Department of Mental Health, the Facts of Offense Sheet shall be sent by the Department of Mental Health to the registering law enforcement agency in the jurisdiction where the person will live on release, within three days of release.[74]

Section 1203e is new: the requirement to "compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender…who is referred to the department pursuant to Section 1203" was not found in prior law. However, some of the information required to complete the Facts of Offense Sheet would have been required to complete the reports required under sections 1203 and 1203c. For example, the name and criminal history of the individual are items required by sections 1203 and 1203c, and would not be an item of information that a probation officer would be required to independently investigate for purposes of section 1203e. Therefore the new activity of compiling the Facts of Offense Sheet is limited to completing the form, which the statute refers to as compiling the document, and gathering only information not collected pursuant to section 1203 or 1203c (i.e., information not required to be collected under prior law). Finally, the plain language of section 1203e also

[74] Penal Code section 1203e (added, Stats. 2006, ch. 337, § 40 (SB 1128)).

requires a probation department to send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's conviction.

Based on the foregoing, the Commission finds that section 1203e, as added by Statutes 2006, chapter 337 (SB 1128) imposes new required activities on probation departments, beginning January 1, 2010, to (1) compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender who is referred to the department pursuant to section 1203; (2) include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required; (3) include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and (4) send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction. Obtaining information that is already required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to CDCR under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not part of this new activity.[75]

8. Penal Code section 1203f, as added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local probation departments to ensure that high risk sex offenders are placed on intensive and specialized supervision.

Section 1203f was added by Statutes 2006, chapter 337, to provide:

> Every probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders, as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized probation supervision and are required to report frequently to designated probation officers. The probation department may place any other probationer convicted of an offense that requires him or her to register as a sex offender who is on active supervision to be placed on intensive and specialized supervision and require him or her to report frequently to designated probation officers.[76]

This section is new, and the requirement to place high risk offenders on intensive and specialized probation is not found in prior law; prior law stated that "[p]ersons placed on probation by a court shall be under the supervision of the county probation officer who *shall determine both the level and type of supervision* consistent with the court-ordered conditions of probation."[77] The added section requires an additional "level and type of supervision," and does not permit the local probation officer to exercise the discretion available under prior law in the case of sex offenders who are determined to pose a high risk of recidivism.

---

[75] Penal Code section 1203e (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[76] Penal Code section 1203f (added, Stats. 2006, ch. 337, § 41 (SB 1128)).

[77] Penal Code section 1202.8 (as amended by Stats. 1996, ch. 629 (SB 1685)).

Based on the foregoing, the Commission finds that section 1203f, as added by Statutes 2006, chapter 337 (SB 1128) imposes a new required activity on local probation departments to ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the SARATSO, as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized probation supervision and are required to report frequently to designated probation officers.

9. Penal Code section 1202.8, as amended by Statutes 2006, chapter 886 (AB 1849), imposes a new required activity on local agencies to continuously electronically monitor high risk sex offenders, as determined by the SARATSO.

Prior section 1202.8, as amended by Statutes 1996, chapter 6299 (SB 1685) provided that "[p]ersons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation." As amended by Statutes 2006, chapter 886 (AB 1849), section 1202.8 now provides as follows:

> (b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person…
>
> ¶…¶
>
> (d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standards Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017.

Both continuously electronically monitoring high risk sex offenders, and reporting to the Corrections Standards Authority on the effectiveness of continuous electronic monitoring, are new activities, not required under prior law. The prior law left the level and type of supervision to the probation officer's discretion, while amended section 1202.8 does not.

Based on the foregoing, the Commission finds that section 1202.8, as amended by Statutes 2006, chapter 886 (AB 1849), imposes new required activities on probation departments to (1) continuously electronically monitored while on probation, every person who has been assessed with the SARATSO pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high; and (2) beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of offenders, including the costs of monitoring and the recidivism rates of those persons who have been monitored.

10. Penal Code sections 290, 290.011, 290.012 and 1202.7, as added or amended by Statutes 2007, chapter 579 (SB 172), do not impose mandated activities on local agencies.

The County alleges that sections 290, 290.011, 290.012, and 1202.7 impose a reimbursable state mandate for probation departments to engage sex offenders who are identified as transient in specialized treatment. The Commission disagrees.

Penal Code section 290 requires every person who "since July 1, 1944 has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of [specified sex crimes and violent sexual offenses]" to register with the chief of police or the sheriff of the county in which he or she is residing. Section 290.011 requires a person required to register pursuant to section 290 who is living as a transient to register within five days of release from incarceration, placement or commitment, and to re-register every thirty days thereafter. The section also provides that a transient who moves to a residence shall have five working days to register at that address, and a person registered at a residence who becomes transient shall have five working days within which to register as a transient. Section 290.012 requires a person to register annually beginning on his or her first birthday following registration or change of address. Section 290.012 also requires a person adjudicated to be a sexually violent predator to update his or her registration every 90 days, and a person subject to registration living as a transient to update his or her registration every 30 days. In addition, section 290.012 provides that no person shall be made to pay a fee to register or update his or her registration, and the agency shall submit registrations, including updates, directly to the Department of Justice Violent Crime Information Network (VCIN).

The test claimant alleges that these sections, in conjunction with section 1202.7, require local agencies to engage in efforts to treat transient sex offenders. Specifically, section 1202.7 provides that "[i]t is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment."[78]

However, a statement of Legislative intent does not constitute a mandate, within the meaning of article XIII B, section 6. Moreover, the amendments made to section 1202.7 are made only to ensure that the section is consistent with the amendments made to section 290 et seq, and are not new. The substance of section 290.011, addressing transient sex offenders on probation who are required to register and update their registration with local officials, was previously found in section 290(a)(1)(C). And, accordingly, the prior version of section 1202.7 provided that "[i]t is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of section 290 who are on probation to engage them in treatment.[79] Section 290 was repealed and added by Statutes 2007, chapter 579 (SB 172), and the substantive provisions of section 290 were restructured in the Penal Code as sections 290-290.023; section 1202.7 was amended to ensure consistency with the enumeration of the repealed and added language, and did not impose any new requirements.

Therefore, the requirement alleged by the test claimant, to make efforts to provide treatment for transient sex offenders, is not mandated by the state and is not new. The Commission finds that sections 290.011, 290.012, and 1202.7, as added or amended by Statutes 2007, chapter 579 (SB 172), do not impose any state-mandated activities on local agencies.

---

[78] Penal Code section 1202.7 (as amended by Statutes 2007, chapter 579 (SB 172)).

[79] Penal Code section 1202.7 (as amended, Stats. 2001, ch. 485 (AB 1004)).

11. Penal Code section 290.07, as added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local agencies to provide access to all relevant records pertaining to a sex offender to persons authorized to administer the SARATSO.

Section 290.07, as added, provides:

> Notwithstanding any other provision of law, *any person authorized by statute to administer the State Authorized Risk Assessment Tool for Sex Offenders and trained pursuant to Section 290.06 shall be granted access to all relevant records pertaining to a registered sex offender*, including, but not limited to, criminal histories, sex offender registration records, police reports, probation and presentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports, and records that have been sealed by the courts or the Department of Justice. Records and information obtained under this section shall not be subject to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.[80]

Prior to the enactment of section 290.07, the CPRA provided for access to the public generally to some of the categories of records named above. Government Code section 6253 provides that "[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided."[81] And specifically, section 6254 provides that "state and local law enforcement agencies shall make public" the names and occupations of persons arrested, including physical description and the factual circumstances surrounding the arrest.[82] And since every person convicted of a registerable sex offense must first be arrested, the name and occupation of each person eventually assessed under sections 290.04 to 290.06, as well as the factual circumstances surrounding their arrest, must be made public under CPRA.

Therefore, some of the records that a probation department "shall be granted access to" under section 290.07 to complete a SARATSO evaluation are already accessible under CPRA. However, section 290.07 provides for broader access than the CPRA: the court in *Wescott v. County of Yuba* held that the CPRA "is considered to be general legislation and is consequently subordinate to specific legislation on the same subject."[83] The court concluded that "Section 827 of the Welfare and Institutions Code expressly covers the confidentiality of juvenile court records and their release to third parties, and is controlling over the Public Records Act to the extent of any conflict."[84] But section 290.07 expressly states: "*[n]otwithstanding any other provision of law*, any person authorized by statute to administer the [SARATSO] shall be granted

---

[80] Statutes 2006, chapter 337, section 16 (SB 1128) [emphasis added].

[81] Government Code section 6253 (Stats. 1998, ch. 620 (SB 143); Stats. 1999, ch. 83 (SB 966); Stats. 2000, ch. 982 (AB 2799); Stats. 2001, ch. 355 (AB 1014)).

[82] Government Code section 6254(f) (as amended, Stats. 2005, ch. 620 (SB 922)).

[83] (Cal. Ct. App. 3d Dist. 1980) 104 Cal.App.3d 103, at p. 106 [citations omitted].

[84] *Ibid*.

access to all relevant records pertaining to a registered sex offender, including, but not limited to…juvenile records."[85] Therefore, as in *Wescott*, *supra*, the more specific provision controls,[86] and section 290.07 imposes a higher level of service on local agencies to provide access to relevant records, including juvenile records, for which disclosure is not otherwise required.

The plain language of section 290.07 does not limit itself to *probation departments* granting access to other agencies and persons, but this test claim must be so limited. As discussed above, the Commission does not have jurisdiction, based on the filing date of this test claim, over activities required by statutes effective prior to July 1, 2007, unless there is evidence that the claimant first incurred costs under a particular statute at a later time. Here, section 290.07, as added by Statutes 2006, chapter 337 (SB 1128), has an effective date of September 20, 2006, and while the County stated in the test claim that the probation department began incurring SARATSO costs in February 2008, there is no such assertion made with respect to any other local agencies. There is no evidence to rebut the County's declaration, made under penalty of perjury, and therefore costs incurred by probation departments, but not any other local agency, are within the Commission's jurisdiction for this test claim.

Based on the foregoing, the Commission finds that section 290.07 imposes a higher level of service on county probation departments to grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO. This activity is restricted to providing access to records that are exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

C. Some of the Newly Required Activities Impose a Reimbursable State-Mandated New Program or Higher Level of Service Within the Meaning of Article XIII B, Section 6 and Government Code Section 17514.

The requirements imposed on county probation departments are reimbursable only if all elements of article XIII B, section 6 and Government Code section 17514 are satisfied; the requirements must be mandated by the state, must impose a new program or higher level of service within the meaning of article XIII B, section 6, and must impose costs mandated by the state. Government Code section 17514 provides that "'[c]osts mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." In this respect, Government Code section 17564 provides that "[n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551, or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars." The County alleges that the activities alleged in this test claim related to the SARATSO program result in state-mandated increased costs "far in excess of [one thousand dollars] per annum," and that those costs are not subject to any "funding disclaimers" specified in section 17556.[87]

---

[85] Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

[86] 104 Cal.App.3d at p. 106.

[87] Exhibit A, Test Claim, at p. 43.

Finance argues, however, that "the activities related to completing the SARATSO are subject to subdivision (g) of Government Code section 17556," and therefore barred from reimbursement. Specifically, Finance argues that "[t]he results of the SARATSO are required for the court to make a determination on the probation conditions of a convicted sex offender," and that therefore the SARATSO evaluation necessarily affects "the sex offender's penalty after he/she has been convicted of the crime."[88]

The County responds, in rebuttal comments, that "[c]hapter 337, Statutes of 2006, mandates SARATSO on every registered sex offender who is required to register as a sex offender [sic]." The County argues that persons subject to the SARATSO "do not have to be on probation and SARATSO is not a part of the offender's sentencing." The County argues that "SARATSO is a device to eliminate future victimization" and therefore not subject to the "disclaimer" of section 17556(g).[89]

Article XIII B, section 6 of the California Constitution that states that the Legislature "may, but need not, provide a subvention of funds for…[l]egislation defining a new crime or changing an existing definition of a crime." Government Code section 17556 provides, in pertinent part, that the Commission "shall not find costs mandated by the state," if the test claim statute "created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."[90] The inclusion of subdivision (g) within the statutory exclusions (sometimes called "disclaimers") of section 17556 constitutes the "exercise of the Legislative discretion authorized by article XIII B, section 6" whether to provide a subvention of funds for statutes that create, eliminate, or change the penalty for a crime or infraction.[91]

Section 17556(g) prohibits reimbursement for test claim statutes that create or eliminate a crime, or change the penalty for a crime, "*but only* for that portion of the statute *relating directly to the enforcement of the crime or infraction*." Probation is "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer."[92] In addition, Penal Code section 1202.7 includes punishment as one of the primary considerations in granting probation:

---

[88] Exhibit E, Department of Finance Comments, at p. 1.

[89] Exhibit F, County of Los Angeles Rebuttal Comments, at p. 3.

[90] Government Code section 17556(g) (Stats. 2010, ch. 719 (SB 856)).

[91] See *County of Contra Costa v. State of California* (Cal. Ct. App. 3d Dist. 1986) 177 Cal.App.3d 62, at p. 67, Fn 1 ["After the adoption of article XIII B, section 6, the Legislature in 1980 amended Revenue and Taxation Code sections 2207 and 2231, and expanded the definition of 'costs mandated by the State' by including certain specified statutes enacted after January 1, 1973. (Stats. 1980, ch. 1256, § 5, p. 4248.) In *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568, 573, the court concluded that 'this reaffirmance constituted the exercise of the Legislative discretion authorized by article XIII B, section 6, subdivision (c), of the California Constitution [to provide subvention of funds for mandates enacted prior to January 1, 1975].'"].

[92] Penal Code section 1203(a) (Stats. 2006, ch. 337 (SB 1128)).

> "The Legislature finds and declares that the provision of probation services is an essential element in administration of criminal justice. The safety of the public, which shall be a primary goal through enforcement of court-ordered conditions of probation; the nature of the offense, the interests of justice, *including punishment*, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation." (Emphasis added.)

Furthermore, the successful completion of probation is required before the unconditional release of the defendant. If the convicted defendant does not successfully complete probation, the defendant is subject to further sentencing and incarceration.[93] Finally, *County of Orange v. State Board of Control* concluded that "probation is an *alternative sentencing device imposed after conviction*," unlike the pretrial diversion program added by statute, which the court held did not change the penalty for a crime.[94]

Therefore the implication of *County of Orange*, and the logical conclusion from the plain language of section 17556(g) is that probation is a penalty for the conviction of certain sex offenses and that changes to the duration or conditions of probation that result in increased costs to local agencies are subject to the exclusion from reimbursement stated in Government Code section 17556(g). Changes to the administrative activities *leading up to probation*, or additional functions resulting in increased costs *not directly related to the duration or conditions of punishment* and that are *administrative* in nature generally are not subject to exclusion from reimbursement under Government Code section 17556(g), because they are not directly related to the definition of or the penalty for a crime.

The following analysis addresses the required new activities identified in the test claim statutes and executive order, and determines whether any or all are barred from reimbursement by section 17556(g).

1. Training requirements under section 290.05; reporting to Corrections Standards Authority under section 1202.8; and granting access to relevant records under section 290.07 are administrative functions performed by local agencies pursuant to the test claim statute, and are not directly related to the creation, expansion, or elimination of crimes or penalties for crimes, and therefore are not barred from reimbursement by Government Code section 17556(g).

---

[93] Penal Code section 1203.2 provides authority to revoke probation and impose further sentencing, including incarceration, if the defendant violates *any* term of probation. ["At any time during the probationary period…if any probation officer or peace officer has probable cause to believe that the probationer is violating any term or condition of his or her probation or conditional sentence, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation…"].

[94] (Cal. Ct. App. 4th Dist. 1985) 167 Cal.App.3d 660, at p. 667.

The plain language of section 17556(g) does not bar a finding of costs mandated by the state for training, reporting, granting access to other agencies and personnel, and record keeping activities under sections 290.05, 1202.8, 290.07, and 290.08. These activities are not related to the expansion or elimination of crime, or the enhancement or elimination of punishment.

Specifically, section 290.05 requires county probation departments and authorized law enforcement agencies to designate personnel to attend training and to train others within the organization, and to ensure that persons administering the SARATSO receive training no less frequently than every two years. These training activities are not related to the expansion of crime or the execution of punishments for crime.

Likewise, section 1202.8 requires a county probation department to report, beginning January 1, 2009, and every two years thereafter, to the Corrections Standards Authority "all relevant statistics and relevant information" regarding the effectiveness of continuous electronic monitoring of offenders required to register pursuant to section 290, including the costs of the program and recidivism rates of those monitored. While electronic monitoring itself is incident to the punishment and a condition of probation, and therefore not reimbursable in itself under section 17556(g), as discussed below, this reporting requirement is administrative in nature, and does not relate directly to the punishment or enforcement of crime. Section 17556(g) states that the Commission shall not find costs mandated by the state when a statute changes the penalty for a crime or infraction, "but only for that portion of the statute relating directly to the enforcement of the crime or infraction." This activity does not relate directly to enforcement, and is therefore not barred from a finding of costs mandated by the state.

In addition, granting access to relevant records pertaining to a person required to register as a sex offender to any person authorized to administer the SARATSO, as required by section 290.07, is an administrative function, and has little relation to the enforcement of the underlying crimes that trigger the duty of county probation departments to provide access. Therefore these activities and costs are not barred from reimbursement by section 17556(g).

These requirements constitute new programs or higher levels of service that are administrative in nature and not related to the punishment for or enforcement of crime, and that result in local agencies incurring increased costs mandated by the state.

Based on the foregoing, the Commission finds that the following activities constitute reimbursable state-mandated new programs or higher levels of service:

For county probation departments and authorized local law enforcement agencies:

1. Designate key persons within their organizations to attend training and, as authorized by the department, train others within their organizations.[95]
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.[96]

[95] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[96] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

For county probation departments:

1. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.[97]

2. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.

   This activity is not new to the extent of records required to be disclosed under the California Public Records Act (Government Code § 6250, et seq.).[98]

2. Administering SARATSO assessments under section 290.06; including the results of the SARATSO assessments in presentencing reports prepared under section 1203; including the results of the SARATSO assessments in reports submitted to the Department of Corrections and Rehabilitation under section 1203c; and compiling a Facts of Offense Sheet including the results of the SARATSO assessment, where applicable, and including the Facts of Offense Sheet in the presentencing report required by section 1203 impose a reimbursable new program or higher level of service on county probation departments.

The activities related to administering the SARATSO under section 290.06, and including the SARATSO results in presentencing reports, reports made to CDCR, and in the Facts of Offense Sheet included in a presentencing report, are all *administrative functions* whose costs *do not result* from a statute altering the duration or conditions of the penalty. Although the activities related to administering the SARATSO may result in an augmented or mitigated punishment (which may entail increased costs), and may result in changed conditions of probation, as discussed below, the activities for which reimbursement is sought relating to administering the SARATSO are not directly related to these changed penalties.

Specifically, section 290.06(a)(4), as discussed above, requires a probation department to assess, using the SARATSO, the risk of reoffending for every sex offender "for whom it prepares a report pursuant to Section 1203." Section 290.06(a)(5) requires a probation department to also assess every "eligible person," meaning every sex offender required to register under section 290, currently under supervision and prior to the termination of probation. Section 1203, as discussed above, requires a report to the court, after conviction but before sentencing, "which may be considered either in aggravation or mitigation of the punishment." Therefore the SARATSO administered pursuant to section 290.06(a)(4) may have an impact on the duration or conditions of probation, based on the plain language of sections 290.06 and 1203. However, the activity for which reimbursement is sought is the assessment itself; this activity is administrative in nature, and is not a penalty in itself, even though it may lead to an increased penalty imposed by the court.

Likewise, section 1203 requires a probation officer to include the results of the SARATSO evaluation in the presentencing report, and requires preparation of a presentencing report for all

[97] Penal Code section 1202.8 (Stats. 2006, ch. 336 (SB 1178); Stats. 2006, ch. 886 (AB 1849)).

[98] Penal Code section 290.07 (Stats. 2006, ch. 337 (SB 1128)).

sex offenses that require a person to register as a sex offender under section 290. The report, when received by the court, may have an effect on the punishment imposed for the underlying crime, but the requirement to prepare the report, and the requirement to include the SARATSO evaluation in the report are administrative functions that are not alleged to result in costs related to the penalty for the underlying offense. As discussed above, the changed penalty is not the subject of reimbursement; the required activity for which reimbursement is sought is preparing the report and ensuring that a SARATSO evaluation, where applicable, is included in the report.

In addition, section 1203c requires a probation officer to include the results of the SARATSO evaluation in the report prepared for CDCR, if applicable. This is an administrative reporting requirement and is not directly related to law enforcement or the penalty for a crime.

And finally, section 1203e requires a county probation department, beginning January 1, 2010, to prepare a Facts of Offense Sheet for inclusion in the presentencing report prepared pursuant to section 1203, and also to be sent to the Department of Justice Sex Offender Tracking Program within 30 days of conviction. The Facts of Offense Sheet is also required, for all offenses requiring registration under section 290, to include the results of the SARATSO evaluation, if applicable. Like sections 290.06 and 1203, above, the requirements of section 1203e are administrative in nature, and do not of themselves change the penalty for the underlying crime.

Based on the foregoing, the Commission finds that the following activities are not barred from reimbursement by section 17556(g), and therefore constitute reimbursable state-mandated new programs or higher levels of service:

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.[99]
2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing,.[100]

[99] Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[100] Penal Code section 1203 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

Preparing the presentencing report under section 1203 is not a new activity and, thus, is not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.[101]

   Preparing the report under section 1203c is not a new activity and, thus, is not eligible for reimbursement.

[101] Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)). See also Penal Code section 290.0404 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

4. Beginning January 1, 2010:

   (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;

   (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;

   (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and

   (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

   Obtaining information that is already required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c, as amended by Statutes 1963, chapter 1785 is not new or subject to reimbursement under this activity.[102]

3. Continuously electronically monitoring high risk sex offenders under section 1202.8, and ensuring that high risk sex offenders are placed under intensive and specialized supervision under section 1203f, are activities directly related to the penalty for the sex crime, and are not reimbursable under section 17556(g).

As discussed above, the plain language of article XIII B, section 6(a)(2) and section 17556(g), along with the statutory and case law determinations that probation is a form of criminal punishment, and a sentencing device,[103] results in a working rule and analysis that required changes to the duration or conditions of probation that result in increased costs to local agencies are subject to the exclusion in Government Code section 17556(g), and therefore not reimbursable.

Here, section 1202.8 requires county probation departments, beginning January 1, 2009, to continuously electronically monitor sex offenders while on probation who assess at a high risk level under the SARATSO. Electronic monitoring is thus a condition of probation that facially constitutes a greater deprivation of liberty, and therefore constitutes a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of electronic monitoring under section 1202.8 are not costs mandated by the state, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

---

[102] Penal Code section 1203e (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[103] *County of Orange, supra,* 167 Cal.App.3d 660, at p. 667.

Likewise, section 1203f requires county probation departments to place sex offenders who are on probation and who assess at a high risk level under the SARATSO on "intensive and specialized probation," and to require such probationers "to report frequently to designated probation officers." These requirements are conditions of probation placed on a subset of probationers, as specified, and therefore constitute a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of providing "intensive and specialized probation" services are not costs mandated by the state, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Based on the foregoing, section 1202.8, as amended by Statutes 2006, chapter 336 (SB 1178), and Statutes 2006, chapter 886 (AB 1849), and section 1203f, as added by Statutes 2006, chapter 337 (SB 1128), are denied.

V. Conclusion

Based on the foregoing, the Commission finds that the test claim statutes and executive order constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities only:

For county probation departments and authorized local law enforcement agencies to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;[104] and,

2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.[105]

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.[106]

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court

[104] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[105] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[106] Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.[107]

Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.[108]

   Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.

4. Beginning January 1, 2010:

   (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;

   (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;

   (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and

   (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

   Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.[109]

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.[110]

---

[107] Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[108] Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

[109] Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

[110] Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.[111]

   This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

All other statutes, regulations, and activities pled in this test claim do not constitute reimbursable state-mandated programs subject to article XIIIB, section 6 of the California Constitution and are, therefore, denied.

[111] Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

RE: **Adopted Statement of Decision**

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO), 08-TC-03
Penal Code Sections 290.3 et al.
County of Los Angeles, Claimant

On January 24, 2014, the foregoing statement of decision of the Commission on State Mandates was adopted in the above-entitled matter.

Heather Halsey, Executive Director

Dated: February 3, 2014

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 3, 2014, I served the:

> **Adopted Statement of Decision, Draft Expedited Parameters and Guidelines, and Notice of Hearing**
> *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03
> Penal Code Sections 290.3 et al.
> County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 February 3, 2014 at Sacramento, California.

Jason Hone
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/16/14

Claim Number: 08-TC-03

Matter: State Authorized Risk of Assessment Tool for Sex Offenders (SARATSO)

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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.)

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services,LLC*
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916)595-2646
Bburgess@mgtamer.com

Michael Byrne, *Department of Finance*
915 L Street, 8th Floor, Sacramento, CA 95814

Phone: (916) 445-3274
michael.byrne@dof.ca.gov

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
gcarlos@sco.ca.gov

Annette Chinn, *Cost Recovery Systems,Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Alan Deal, *Peace Officer Standards and Training*
Standards & Development Division, 1601 Alhambra Boulevard , Sacramento, CA 95816-7083
Phone: (916) 227-2807
alan.deal@post.ca.gov

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
mdelfin@sco.ca.gov

Tom Dyer, *Department of Finance (A-15)*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
tom.dyer@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dorothy Holzem, *California Special Districts Association*
1112 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dorothyh@csda.net

Kathleen Howard, *Corrections Standards Authority*
600 Bercut Drive, Sacramento, CA
Phone: (916) 445-5073
kathleen.howard@bscc.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Susan Jensen, *SARATSO Review and Training Committee*
1515 S Street, Room 212-N, Sacramento, CA
Phone: (916) 327-5413
DAPOCASOMB@cdcr.ca.gov

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

Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Matt Jones, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
matt.jones@csm.ca.gov

Ferlyn Junio, *Nimbus Consulting Group,LLC*
2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825
Phone: (916) 480-9444
fjunio@nimbusconsultinggroup.com

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Jean Kinney Hurst, Senior Legislative Representative, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814-3941
Phone: (916) 327-7500
jhurst@counties.org

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Amber Lozano, *Department of Justice BCIA (D-08)*
Criminal Justice Statistics Center, P.O. Box 903427, , CA
Phone: (916) 227-3282
amber.lozano@doj.ca.gov

Kathleen Lynch, *Department of Finance (A-15)*
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

Hortensia Mato, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Howard Moseley, *Department of Corrections*

Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812
Phone: (916) 323-1643
howard.moseley@cdcr.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Marianne O'Malley, *Legislative Analyst's Office (B-29)*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8315
marianne.O'malley@lao.ca.gov

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Karen Pank, *Chief Probation Officers of California*
1415 L Street, Suite 200, Sacramento, CA 95814
Phone: (916) 447-2762
Karen@warnerandpank.com

Alice Park-Renzie, *County of Alameda*
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Anita Peden, *County of Sacramento*
711 G Street, Room 405, Sacramento, CA 95814
Phone: (916) 874-8441
apeden@sacsheriff.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845

markrewolinski@maximus.com

Kathy Rios, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Cynthia Rodriguez, *Department of State Hospitals*
1600 9th Street, Room 443, Sacramento, CA 95814
Phone: (916) 654-2319
cynthia.rodriguez@dmh.ca.gov

Matthew Schuneman, *MAXIMUS*
900 Skokie Boulevard, Suite 265, Northbrook, Il 60062
Phone: (847) 513-5504
matthewschuneman@maximus.com

Stephanie Scofield, Assistant Executive Director, *Peace Officer Standards and Training*
Administrative Services Division, 1601 Alhambra Boulevard , Sacramento, CA 95816-7083
Phone: (916) 227-2803
stephanie.scofield@post.ca.gov

Lee Scott, *Department of Finance*
15 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
lee.scott@dof.ca.gov

David Scribner, *Max8550*
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Jennifer Shaffer, *Department of Corrections*
Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812
Phone: (916) 445-7950
jennifer.shaffer@cdcr.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Meg Svoboda, *Senate Office of Research*
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Jolene Tollenaar, *MGT of America*
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136

jolene_tollenaar@mgtamer.com

Kemiko Tolon, *SARATSO Review and Training Committee*
1515 S Street, Room 212-N, Sacramento, CA
Phone: (916) 327-1841
kemiko.tolon@cdcr.ca.gov

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
brian.uhler@lao.ca.gov

Wendy Watanabe, *County of Los Angeles*
500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8301
wwatanabe@auditor.lacounty.gov

David Wellhouse, *David Wellhouse & Associates,Inc.*
3609 Bradshaw Road, Suite 121, Sacramento, CA 95927
Phone: (916) 368-9244
dwa-david@surewest.net

Hasmik Yaghobyan, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Sections 188, 189, and 1170.95 as added or amended by Statutes 2018, Chapter 1015 (SB 1437) Filed on December 31, 2019 County of Los Angeles, Claimant	Case No.: 19-TC-02 *Accomplice Liability for Felony Murder* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted December 4,2020*) (*Served December 9, 2020*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on December 4, 2020.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Sections 188, 189, and 1170.95 as added or amended by Statutes 2018, Chapter 1015 (SB 1437) Filed on December 31, 2019 County of Los Angeles, Claimant	Case No.: 19-TC-02 *Accomplice Liability for Felony Murder* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted December 4, 2020*) (*Served December 9, 2020*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on December 4, 2020. Lucia Gonzalez, Felicia Grant, and Craig Osaki appeared as witnesses for the County of Los Angeles (claimant). Christina Snider and John O'Connell appeared on behalf of the County of San Diego.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny the Test Claim by a vote of 4-3, as follows:

Member	**Vote**
Lee Adams, County Supervisor	No
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	No
Carmen Ramirez, City Council Member	Yes
Andre Rivera, Representative of the State Treasurer, Vice-Chairperson	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller	No

Summary of the Findings

This Test Claim filed by the County of Los Angeles (claimant) addresses Statutes 2018, chapter 1015, which amended Penal Code sections 188 and 189 and added Penal Code section 1170.95, with respect to accomplice liability for felony murder.

Generally, to prove the crime of murder, the prosecution must show that the defendant performed an act that took a human life and that the defendant had the necessary state of mind or "malice aforethought" to commit that act.[1] However, under prior law, if a killing occurred during the commission of another crime, then malice and the intent to kill could be presumed or implied to support a conviction of murder. For example, under the felony-murder rule, if a person is killed, even accidentally or by an accomplice while the defendant committed certain other felonies, the defendant could be convicted of murder without the prosecutor having to prove that the defendant intended or had the state of mind to kill.[2] Similarly, the natural and probable consequences doctrine allows for a conviction of murder without the need to prove the defendant's state of mind, if the killing was a natural and probable consequence of the "targeted" crime committed by the defendant.[3]

The test claim statute amended Penal Code sections 188 and 189, and added section 1170.95, to limit the definition of murder to be applicable only to those who have either an intent to kill or who were major participants in the underlying crime and acted with reckless indifference to human life. Thus, the law no longer allows a person to be convicted of murder simply based on implied or presumed intent. To apply these standards retroactively, Penal Code section 1170.95 sets forth a petition process allowing petitioners who were convicted of first- or second-degree murder under the felony-murder rule or the natural and probable consequences doctrine, to request the court to vacate the murder conviction and to resentence the petitioner on the remaining counts. The statute requires county district attorneys and public defenders, when appointed to defend the petitioner, to participate in the process and the hearing on the petition. The court shall vacate the murder conviction and recall the sentence when:

- The parties stipulate that the petitioner is eligible to have his or her murder conviction vacated and for resentencing.
- The court or jury at the original trial made specific findings that the petitioner did not act with reckless indifference to human life or was not a major participant in the felony.
- The district attorney fails to sustain its burden of proof, beyond a reasonable doubt, that the petitioner is ineligible to have the murder conviction vacated and for resentencing; in other words, the district attorney fails to prove that the petitioner intended to kill or was a major participant in the crime and acted with reckless indifference to human life.[4]

---

[1] Penal Code sections 187, 188.

[2] *People v. Dillon* (1983) 34 Cal.3d 441, 467-468; Penal Code section 189, as last amended by Statutes 2010, chapter 178.

[3] *People v. Chiu* (2014) 59 Cal.4th 155, 158.

[4] Penal Code section 1170.95(d).

The Commission finds that this Test Claim was timely filed within 12 months of the effective date of the test claim statute.

The Commission finds that sections 188 and 189 of the Penal Code, as amended by the test claim statute, do not impose any requirements on local government and, thus, do not impose a state-mandated program. Penal Code sections 188 and 189 define "malice" and "murder" and, as amended, limit the definition of murder to the actual killer, someone with the intent to kill who assisted the killer, or a major participant in the crime who acted with reckless indifference to human life.

The Commission further finds that Penal Code section 1170.95 imposes new requirements on county district attorneys and public defenders to participate in the petition process, however those requirements do not impose costs mandated by the state. Government Code section 17556(g), which implements article XIII B, section 6, provides that the Commission "shall not find costs mandated by the state" when the "statute or executive order created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute directly relating to the enforcement of the crime or infraction." The test claim statute changed the elements of the crime of murder and, in so doing, "vacated" or eliminated the crime of murder under the felony-murder rule and the natural and probable consequences doctrine unless it is proven beyond a reasonable doubt, that the defendant had the intent to kill or was a major participant acting with reckless indifference to human life and, thus, there are no costs mandated by the state within the meaning of Government Code section 17556(g).

Accordingly, the Commission denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2019	The effective date of Statutes 2018, chapter 1015, amending Penal Code sections 188, 189, and enacting Penal Code section 1170.95.
12/31/2019	The claimant filed the Test Claim.[5]
04/17/2020	The Department of Finance (Finance) requested a 60-day extension of time to file comments on the Test Claim, which was approved for good cause.
06/19/2020	Finance filed comments on the Test Claim.[6]
06/26/2020	Commission staff issued the Draft Proposed Decision.[7]
07/16/2020	The County of San Diego requested a four-week extension of time to file comments on the Draft Proposed Decision, which was approved for good cause.
07/17/2020	The claimant filed Notice of Change of Representation.

[5] Exhibit A, Test Claim, filed December 31, 2019.

[6] Exhibit B, Finance's Comments on the Test Claim, filed June 19, 2020.

[7] Exhibit C, Draft Proposed Decision, issued July 21, 2020.

07/17/2020	The San Joaquin County Board of Supervisors' Chair filed comments on the Draft Proposed Decision.[8]
07/21/2020	The claimant requested a four-week extension of time to file comments on the Draft Proposed Decision and to postpone the hearing to December 4, 2020, which was approved for good cause.
08/04/2020	The County of San Diego requested an eight day extension of time to file comments on the Draft Proposed Decision, which was approved for good cause.
08/10/2020	The California Public Defenders Association filed late comments on the Draft Proposed Decision.[9]
08/14/2020	The County of San Diego filed comments on the Draft Proposed Decision.[10]
08/14/2020	The claimant filed comments on the Draft Proposed Decision.[11]
08/17/2020	The Alameda County Public Defender's Office filed late comments on the Draft Proposed Decision.[12]

II. Background

A. A History of the Felony-Murder Rule and the Natural and Probable Consequences Doctrine

1. The History of the Felony-Murder Rule in California

Generally, to be convicted of murder, proof must be shown that the defendant performed an act that took the life of a human being and had the necessary state of mind to commit that act.[13] Application of the felony-murder rule, however, removes the need to prove the defendant's malice, or state of mind.

> [T]he two kinds of first degree murder in this state differ in a fundamental respect: in the case of deliberate and premeditated murder with malice aforethought, the defendant's state of mind with respect to the homicide is all-important and must be proved beyond a reasonable doubt; in the case of first degree felony murder it is entirely irrelevant and need not be proved at all. From this profound legal

[8] Exhibit D, San Joaquin County, Board of Supervisors' Chair's Comments on the Draft Proposed Decision, filed July 17, 2020.

[9] Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020.

[10] Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020.

[11] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020.

[12] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020.

[13] Penal Code section 187 defines murder as "the unlawful killing of a human being, or a fetus, with malice aforethought." Penal Code section 188 defines "malice."

> difference flows an equally significant factual distinction, to wit, that first degree felony murder encompasses a far wider range of individual culpability than deliberate and premeditated murder. It includes not only the latter, but also a variety of unintended homicides resulting from reckless behavior, or ordinary negligence, or pure accident; it embraces both calculated conduct and acts committed in panic or rage, or under the dominion of mental illness, drugs, or alcohol; and it condemns alike consequences that are highly probable, conceivably possible, or wholly unforeseeable.
>
> Despite this broad factual spectrum, the Legislature has provided only one punishment scheme for all homicides occurring during the commission of or attempt to commit an offense listed in section 189: regardless of the defendant's individual culpability with respect to that homicide, he must be adjudged a first degree murderer and sentenced to death or life imprisonment with or without possibility of parole — the identical punishment inflicted for deliberate and premeditated murder with malice aforethought.[14]

The felony-murder rule derives from English law.[15] In 1850, the California Legislature codified the felony-murder rule.[16] In 1872, the Legislature enacted the Penal Code with the inclusion of the felony-murder rule codified at Penal Code section 189.[17] Section 189(a) enumerates a list of felonies and if a killing occurs during the commission of one of the enumerated felonies, even if the death is unknown to the defendant or is accidental, then the defendant could be convicted of murder in the first-degree without the need for proof of the defendant's malice. The California Supreme Court explained the purpose of the felony-murder rule as follows:

> The purpose of the felony-murder rule is to deter those who commit the enumerated felonies from killing by holding them strictly responsible for any killing committed by a cofelon, whether intentional, negligent, or accidental, during the perpetration or attempted perpetration of the felony. [Citation omitted.] "The Legislature has said in effect that this deterrent purpose outweighs the normal legislative policy of examining the individual state of mind of each person causing an unlawful killing to determine whether the killing was with or without malice, deliberate or accidental, and calibrating our treatment of the person accordingly. Once a person perpetrates or attempts to perpetrate one of the enumerated felonies, then in the judgment of the Legislature, he is no longer

---

[14] *People v. Dillon* (1983) 34 Cal.3d 441, 476-477 citing Penal Code section 190 et seq.

[15] Exhibit I, Bald, *Rejoining Moral Culpability With Criminal Liability: Reconsideration of the Felony Murder Doctrine for the Current Time* (2017) 44 J. Legis. 239, 241-242, https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1679&context=jleg (accessed on April 16, 2020); Miller, *People v. Dillon: Felony Murder in California* (1985) 21 Cal. Western L.Rev. 546, 546-547, https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1578&context=cwlr (accessed on April 10, 2020).

[16] Statutes 1850, chapter 99, page 229; *People v. Dillon* (1983) 34 Cal.3d 441, 465.

[17] *People v. Dillon* (1983) 34 Cal.3d 441, 467-468.

> entitled to such fine judicial calibration, but will be deemed guilty of first degree murder for any homicide committed in the course thereof."[18]

A homicide that is a direct causal result of the commission of a felony inherently dangerous to human life, other than the felonies enumerated in Penal Code section 189, constitutes "at least second degree murder."[19]

The application of the felony-murder rule has been strongly criticized.[20] Three states have abolished it and several others have tempered its impact by lessening the degree of murder or homicide that can be charged.[21] The California Supreme Court has characterized the felony-murder rule as a "'barbaric' concept that has been discarded in the place of its origin"[22] and "a 'highly artificial concept' which 'deserves no extension beyond its required application'"[23] and that "'in almost all cases in which it is applied it is unnecessary' and 'it erodes the relation between criminal liability and moral culpability.'"[24]

While acknowledging that it was not empowered to overrule the Legislature, the court took a step toward reestablishing the relationship between criminal liability and culpability in *People v. Dillon*.[25] In that case, a 17-year-old was convicted of first-degree murder under the felony-murder rule for the shooting death of a property owner during an attempted robbery.[26] The defendant and several others armed themselves and entered a marijuana grow to steal some plants. The property owner and his security, also armed, responded.[27] The defendant heard gun fire. In the ensuing confusion, the defendant panicked and thinking that he was soon to be shot, the defendant shot the property owner nine times only stopping when his gun was empty.[28] Weighing the facts of the crime — the immaturity of the defendant, his panic and lack of intent to kill, only the defendant was charged with any type of homicide — against the punishment of life in prison, the court found the application of the felony-murder rule was unconstitutional in

---

[18] *People v. Cavitt* (2004) 33 Cal.4th 187, 197.

[19] *People v. Ford* (1964) 60 Cal.2d 772, 795.

[20] *People v. Dillon* (1983) 34 Cal.3d 441.

[21] Exhibit I, Miller, *People v. Dillon: Felony Murder in California* (1985) 21 Cal. Western L.Rev. 546, 547-548, https://scholarlycommons.law.cwsl.edu/cgi/viewcontent.cgi?article=1578&context=cwlr (accessed on April 10, 2020).

[22] *People v. Dillon* (1983) 34 Cal.3d 441, 463 citing *People v. Phillips* (1966) 64 Cal.2d 574, 583, footnote 6.

[23] *People v. Dillon* (1983) 34 Cal.3d 441, 463 citing *People v. Phillips* (1966) 64 Cal.2d 574, 582.

[24] *People v. Dillon* (1983) 34 Cal.3d 441, 463 citing *People v. Washington* (1965) 62 Cal.2d 777.

[25] *People v. Dillon* (1983) 34 Cal.3d 441, 465.

[26] *People v. Dillon* (1983) 34 Cal.3d 441, 450.

[27] *People v. Dillon* (1983) 34 Cal.3d 441, 451-452.

[28] *People v. Dillon* (1983) 34 Cal.3d 441, 482.

this case and reduced the defendant's sentence from first-degree murder to second-degree murder.[29]

2. The History of the Natural and Probable Consequences Doctrine in California

The natural and probable consequences doctrine allows for a conviction for any crime, including murder, without the need to prove the defendant's malice or state of mind, if the "nontargeted" crime was a natural and probable consequence of the "targeted" crime that the defendant aided and abetted.[30]

> There are two distinct forms of culpability for aiders and abettors. "First, an aider and abettor with the necessary mental state is guilty of the intended crime [target offense]. Second, under the natural and probable consequences doctrine, an aider and abettor is guilty not only of the intended crime, but also 'for any other offense that was a "natural and probable consequence" of the crime aided and abetted [nontarget offense].'"[31]

The nontarget offense is a natural and probable consequence if it was foreseeable by an objective, reasonable person.[32] Like the felony-murder rule, the natural and probable consequences doctrine has been strongly criticized by legal scholars.[33] Indeed, the majority of states do not adhere to it and the Model Penal Code does not include it.[34]

The California Supreme Court took another step toward reestablishing the relationship between criminal liability and culpability in *People v. Chiu*.[35] In that case, high school students were gathered after school. The defendant made a remark to a young woman. Her friends engaged in

---

[29] *People v. Dillon* (1983) 34 Cal.3d 441, 488-489.

[30] Exhibit I, Goldstick, *Accidental Vitiation: The Natural and Probable Consequence of Rosemond v. United States on the Natural and Probable Consequence Doctrine* (2016) 85 Fordham L.Rev. 1281, 1290, https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5268&context=flr (accessed on April 10, 2020).

[31] *People v. Chiu* (2014) 59 Cal.4th 155, 158 citing *People v. McCoy* (2001) 25 Cal.4th 1111, 1117. Internal citations omitted in original.

[32] *People v. Chiu* (2014) 59 Cal.4th 155, 161-162.

[33] Exhibit I, Decker, *The Mental State Requirement For Accomplice Liability in American Criminal Law* (2008) 60 S.C. L.Rev. 237, 243-244, https://works.bepress.com/john-decker/2/download/ (accessed on April 17, 2020); Goldstick, *Accidental Vitiation: The Natural and Probable Consequence of Rosemond v. United States on the Natural and Probable Consequence Doctrine* (2016) 85 Fordham L.Rev. 1281, 1285, https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5268&context=flr (accessed on April 10, 2020).

[34] Exhibit I, Decker, *The Mental State Requirement For Accomplice Liability in American Criminal Law* (2008) 60 S.C. L.Rev. 237, 380, https://works.bepress.com/john-decker/2/download/ (accessed on April 17, 2020).

[35] *People v. Chiu* (2014) 59 Cal.4th 155.

a verbal exchange with the defendant and his friends. A brawl broke out. One of the defendant's friends drew a gun and shot and killed one of the woman's friends.[36] The defendant was convicted of first-degree premeditated murder.[37] The court explained that liability under the natural and probable consequences doctrine is vicarious. The defendant didn't intend for the nontarget offense, the shooting, to happen. So, the defendant's intent is imposed vicariously from the shooter's premeditation.[38] The court noted that premeditation "is uniquely subjective and personal" making it "too attenuated to impose aider and abettor liability for first degree murder under the natural and probable consequences doctrine, especially in light of the severe penalty involved…."[39] The court held that the natural and probable consequences doctrine cannot support a conviction of first-degree premeditated murder.[40]

3. The U.S. Supreme Court Cases Analyzing the Range of Criminal Liability Under the Felony Murder Rule.

The U.S. Supreme Court examined the criminal liability under the felony-murder rule in two key cases that, when read together, form the two extremes on the continuum of criminal accomplice conduct. The first of these, *Enmund v. Florida*[41] (hereinafter *Enmund*), presented a constitutional challenge under the Eighth Amendment ban against cruel and unusual punishment.[42] Enmund and his companions planned to rob a couple in their home. Enmund remained in the car as the getaway driver while his companions robbed and ultimately killed the couple.[43] Even though Enmund did not kill, attempt to kill, or intend to kill, he was convicted of first-degree murder and sentenced to death.[44] The court held that the sentence of death was cruel and unusual punishment under the Eighth Amendment and that criminal liability must be limited to a defendant's participation in the crime.[45]

In *Tison v Arizona*[46] (hereinafter *Tison*) the issue was whether the rule in *Enmund* had been properly applied in the state court.[47] The Tison brothers broke their father and his cellmate, both convicted murderers, out of prison using a large ice chest full of guns. After their car was disabled by a flat tire, the group carjacked a family of four and drove them into the desert to

---

[36] *People v. Chiu* (2014) 59 Cal.4th 155, 159-160.

[37] *People v. Chiu* (2014) 59 Cal.4th 155, 158.

[38] *People v. Chiu* (2014) 59 Cal.4th 155, 164-165.

[39] *People v. Chiu* (2014) 59 Cal.4th 155, 166.

[40] *People v. Chiu* (2014) 59 Cal.4th 155, 166-167.

[41] *Enmund v. Florida* (1982) 458 U.S. 782.

[42] *Enmund v. Florida* (1982) 458 U.S. 782, 787.

[43] *Enmund v. Florida* (1982) 458 U.S. 782, 783-784.

[44] *Enmund v. Florida* (1982) 458 U.S. 782, 785, and 787.

[45] *Enmund v. Florida* (1982) 458 U.S. 782, 800-801.

[46] *Tison v Arizona* (1987) 481 U.S. 137.

[47] *Tison v Arizona* (1987) 481 U.S. 137, 145-146.

exchange vehicles. Their father indicated he was "thinking about" killing the family and sent the Tison brothers to bring the family some water. When the brothers were returning from retrieving the water from one of the cars, their father and his cellmate shot each of the family members, killing the parents and infant and mortally wounding the teenaged niece, who later died at the scene. The brothers at no point attempted to intervene or render aid to the victims. The group then fled and were apprehended during a shootout with police some days later.[48] Applying the felony-murder rule, the brothers were convicted of four counts of murder and sentenced to death.[49] In applying their own holding in *Enmund*, the court noted that the facts in *Tison* were different from those of *Enmund*. *Enmund* had examined the criminal participant who neither killed nor intended to kill and whose participation in the underlying crime was minor. The facts of *Tison* didn't fit that scenario. Although the Tison brothers were not participants who had killed or who intended to kill, the court found that the brothers were not minor participants and that they knew that their acts would likely result in the death of an innocent person.[50] The court focused on the importance of the brothers' mental state, but noted that the intent to kill is not necessarily a determinant of culpability.[51] Indeed, the court reasoned, "This reckless indifference to the value of human life may be every bit as shocking to the moral sense as an 'intent to kill.'"[52] The court held that engaging in criminal acts that present a grave risk of death is acting with reckless indifference for human life and this mental state, along with the resulting death, may be part of decision process for setting a sentence.[53]

4. The California Supreme Court Case Analyzing Criminal Liability Under the Felony-Murder Rule

Against the backdrop of the *Enmund* and *Tison* cases, the California Supreme Court in *People v. Banks*[54] considered the felony-murder special circumstances conviction of a getaway driver who was sentenced to life imprisonment without parole.[55] At issue was Proposition 115[56] which had extended death penalty eligibility to major participants in felonies who demonstrated reckless indifference to human life under the felony-murder rule. Prior to Proposition 115, aiders and abettors had to have an intent to kill to be sentenced to death or life imprisonment without parole.[57] The court had never reviewed a case involving death penalty eligibility for aiders and

---

[48] *Tison v Arizona* (1987) 481 U.S. 137, 139-141.

[49] *Tison v Arizona* (1987) 481 U.S. 137, 141-143.

[50] *Tison v Arizona* (1987) 481 U.S. 137, 150-152.

[51] *Tison v Arizona* (1987) 481 U.S. 137, 156-157 [noting as examples the defenses of self-defense and provocation].

[52] *Tison v Arizona* (1987) 481 U.S. 137, 157.

[53] *Tison v Arizona* (1987) 481 U.S. 137, 157-158.

[54] *People v. Banks* (2015) 61 Cal.4th 788.

[55] *People v. Banks* (2015) 61 Cal.4th 788, 794-795.

[56] Proposition 115, Primary Election (June 5, 1990).

[57] *People v. Banks* (2015) 61 Cal.4th 788, 798.

abettors.[58] The court examined the two U.S. Supreme Court decisions, *Enmund* and *Tison*. Harmonizing the decisions into the *Tison-Enmund* standard, the Court concluded that punishment must relate to the individual's culpability and the determination of such culpability requires individualized analysis.[59] The court reversed the sentence of life imprisonment without parole.[60]

B. The Test Claim Statute, Statutes 2018, Chapter 1015, Amended Sections 188 and 189 and Added Section 1170.95 to the Penal Code to Limit the Application of the Felony-Murder Rule and the Natural and Probable Consequences Doctrine.

1. The Test Claim Statute

During the 2017-2018 legislative session, the Senate, citing the decision in *People v. Banks*, adopted Concurrent Resolution 48, which set forth the factual bases upon which the Legislature would seek to align penalty with criminal liability in the application of the felony-murder rule and the natural and probable consequences doctrine. The factual bases included: prison overcrowding with the housing of inmates at an average of 130 percent of capacity, the $70,836 annual cost to taxpayers to house an inmate, the fundamental unfairness in punishing felons in a manner not commensurate with their individual culpability, and the felony-murder rule had been limited or rejected by several states and is no longer followed in England where it originated. The resolution resolves, "That the Legislature recognizes the need for statutory changes to more equitably sentence offenders in accordance with their involvement in the crime."[61]

The Legislature followed through on the resolution with the passage of the test claim statute, Statutes 2018, chapter 1015, which limited the applicability of the felony-murder rule and the natural and probable consequences doctrine.

> It is necessary to amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life.[62]

Statutes 2018, chapter 1015, section 1(g) further states the Legislature's intent: "Except as stated in subdivision (e) of Section 189 of the Penal Code [regarding felony murder], a conviction for murder requires that a person act with malice aforethought. A person's culpability for murder must be premised upon that person's own actions and subjective mens rea [mental state]."

Thus, the test claim statute amended Penal Code sections 188 and 189. Penal Code section 188 was amended to add subdivision (a)(3), which states as follows:

---

[58] *People v. Banks* (2015) 61 Cal.4th 788, 800-801.

[59] *People v. Banks* (2015) 61 Cal.4th 788, 800-805.

[60] *People v. Banks* (2015) 61 Cal.4th 788, 812.

[61] Exhibit I, Senate Concurrent Resolution 48 (2017-2018 Reg. Sess.), resolution chapter 175.

[62] Statutes 2018, chapter 1015, section 1(f).

> (3) Except as stated in subdivision (e) of Section 189 [regarding felony murder], in order to be convicted of murder, a principal in a crime shall act with malice aforethought. Malice shall not be imputed to a person based solely on his or her participation in a crime.

Penal Code section 189 was amended to add subdivision (e), which specifies the proof necessary to apply the felony-murder rule; that is, the liability for murder is limited to the actual killer, someone with the intent to kill who assisted the killer, or a major participant who acted with reckless indifference to human life.

Penal Code section 1170.95 was added to provide a petition and hearing process by which those convicted of first- or second-degree murder under the felony-murder rule or the natural and probable consequences doctrine, who would not have been convicted under the amended Penal Code sections 188 and 189, can obtain a review by filing a petition to have their murder conviction vacated and to be resentenced on any remaining counts:

> (a) A person convicted of felony murder or murder under a natural and probable consequences theory may file a petition with the court that sentenced the petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:
>
> (1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine.
>
> (2) The petitioner was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second degree murder.
>
> (3) The petitioner could not be convicted of first or second degree murder because of changes to Section 188 or 189 made effective January 1, 2019.
>
> (b)(1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. If the judge that originally sentenced the petitioner is not available to resentence the petitioner, the presiding judge shall designate another judge to rule on the petition. The petition shall include all of the following:
>
> (A) A declaration by the petitioner that he or she is eligible for relief under this section, based on all the requirements of subdivision (a).
>
> (B) The superior court case number and year of the petitioner's conviction.
>
> (C) Whether the petitioner requests the appointment of counsel.
>
> (2) If any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information.

(c) The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor response is served. These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.

(d)(1) Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the murder conviction and to recall the sentence and resentence the petitioner on any remaining counts in the same manner as if the petitioner had not been previously sentenced, provided that the new sentence, if any, is not greater than the initial sentence. This deadline may be extended for good cause.

(2) The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have his or her murder conviction vacated and for resentencing. If there was a prior finding by a court or jury that the petitioner did not act with reckless indifference to human life or was not a major participant in the felony, the court shall vacate the petitioner's conviction and resentence the petitioner.

(3) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resentenced on the remaining charges. The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.

(e) If petitioner is entitled to relief pursuant to this section, murder was charged generically, and the target offense was not charged, the petitioner's conviction shall be redesignated as the target offense or underlying felony for resentencing purposes. Any applicable statute of limitations shall not be a bar to the court's redesignation of the offense for this purpose.

(f) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner.

(g) A person who is resentenced pursuant to this section shall be given credit for time served. The judge may order the petitioner to be subject to parole supervision for up to three years following the completion of the sentence.

The legislative history supporting the test claim statute cites to the disproportionately long sentences, the lack of deterrent effect, and that other countries had abandoned the felony-murder

rule.[63] Appropriations committees in both houses detailed the high costs involved in implementing the bill which included: the courts' costs to conduct the hearings, the Department of Corrections and Rehabilitation's costs to transport and supervise inmates going to hearings and to review records, as well as the costs to local governments for the time of district attorneys and public defenders to prepare for and appear at the hearings.[64] The Senate Appropriations Committee also noted the downstream savings on incarceration costs.[65] The bill passed both houses. As one court observed, "[t]hus, the Legislature's dual intents — making conviction and punishment commensurate with liability, and reducing prison overcrowding by eliminating lengthy sentences where unwarranted — dovetailed."[66]

2. The California Appellate Court Upholds Constitutionality of Test Claim Statute.

The constitutionality of the test claim statute was challenged in *People v. Superior Court (Gooden)*, after petitioners, convicted of murder under both the felony murder rule and the natural and probable consequences doctrine, petitioned the court to have their murder convictions vacated under Penal Code section 1170.95.[67] The People moved to dismiss the petitions on the ground that the test claim statute, which the voters did not approve, invalidly amended Propositions 7[68] and 115[69], which increased the punishments for murder and augmented the list of predicate offenses for first-degree felony murder liability under Penal Code section 189.[70] The California Constitution provides that the Legislature may only amend or repeal a statute enacted by voter initiative if there is voter approval or as provided in the initiative.[71] The Legislature may also amend statutes enacted by the voters if the initiative neither authorizes nor prohibits such action.[72] The court held that the test claim statute was not an invalid amendment to Proposition 7 or Proposition 115 because it neither added to, nor took

---

[63] Exhibit I, Senate Committee on Public Safety, Analysis of Senate Bill 1437 (2017-2018 Reg. Sess.), April 24, 2018, pages 3-8; see also, Assembly Committee on Public Safety, Analysis of Senate Bill 1437 (2017-2018 Reg. Sess.), June 26, 2018, pages 4-7.

[64] Exhibit I, Senate Committee on Appropriations, Analysis of Senate Bill 1437 (2017-2018 Reg. Sess.), May 14, 2018, page 1; Assembly Committee on Appropriations, Analysis of Senate Bill 1437 (2017-2018 Reg. Sess.), Aug. 8, 2018, page 1.

[65] Exhibit I, Senate Committee on Appropriations, Analysis of Senate Bill 1437 (2017-2018 Reg. Sess.), May 14, 2018, page 1.

[66] *People v. Munoz* (2019) 39 Cal.App.5th 738, 763.

[67] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270.

[68] Proposition 7, General Election (Nov. 7, 1978).

[69] Proposition 115, Primary Election (June 5, 1990).

[70] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 274.

[71] California Constitution, article II, section 10, subdivision (c), *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 279.

[72] California Constitution, article II, section 10, subdivision (c), *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 280 citing *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571.

away from, the initiatives and, therefore, the test claim statute was constitutional in that respect.[73]

Specifically, the amendments made by Proposition 7 did three things to increase the punishment for murder: 1) set the penalty for murder in the first-degree at death, or confinement for life without possibility of parole, or confinement for 25 years to life; 2) set the penalty for murder in the second-degree at confinement for 15 years to life; and 3) expanded the list of special circumstances that would result in a conviction of murder in the first-degree.[74] The prosecution argued that the test claim statute changed the penalties for murder. The court reasoned that such an argument stemmed from confusing the elements of murder[75] and the punishment for murder.[76] As the court explained, "the language of Proposition 7 demonstrates the electorate intended the initiative to increase the punishments, or consequences, for persons who have been convicted of murder. Senate Bill 1437 did not address the same subject matter. . . . Instead, it amended the mental state requirements for murder."[77] The court held that the test claim statute did not amend Proposition 7.[78]

The amendments made by Proposition 115 added kidnapping, train wrecking, and sex offenses to the list of felonies that can result in a charge of murder. Like the test claim statute, Proposition 115 changed the circumstances under which a person may be liable for murder. The issue, reasoned the court, was whether the test claim statute addressed what Proposition 115 authorized or prohibited. The court concluded that the test claim statute only changed the mental state necessary for a murder conviction, not the listed felonies which were the subject of Proposition 115.[79] The court held that the test claim statute did not deprive the voters from what they enacted under either initiative.[80]

The test claim statute is currently under review by the California Supreme Court to determine whether it applies to *attempted* murder liability under the natural and probable consequences doctrine.[81]

---

[73] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 275.

[74] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 280-281.

[75] "'Every crime consists of a group of elements laid down by the statute or law defining the offense and every one of these elements must exist or the statute is not violated.'" (*People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 281, quoting *People v. Anderson* (2009) 47 Cal.4th 92, 101.)

[76] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 281.

[77] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 282.

[78] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 286.

[79] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 287, footnote omitted.

[80] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 289.

[81] *People v. Lopez*, California Supreme Court, Case No. S258175, review granted November 13, 2019, on the following question:

III. Positions of the Parties

A. County of Los Angeles

The claimant alleges that the test claim statute results in reimbursable increased costs mandated by the state. Specifically, the claimant alleges that the test claim statute "requires the County to provide representation, prosecution, and housing to the petitioners who file a resentencing petition . . . ." under Penal Code section 1170.95.[82] The claimant argues that the test claim statute "does not eliminate the felony murder rule" but rather revises "the felony murder rule to prohibit a participant in the commission or attempted commission of a felony that has been determined as inherently dangerous to human life to be imputed to have acted with implied malice, unless he or she personally committed the homicidal act."[83] The claimant alleges new requirements on District Attorneys, Public Defenders, Alternate Public Defenders, and Sheriffs as follows:

> [T]he subject law mandates the following activities on Public Defender:
>
> > a) To file a petition with the court that sentenced the petitioner if: 1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine; 2) The petitioner was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second degree murder; and 3) The petitioner could not be convicted of first or second degree murder because of changes to sections 188 or 189 of the Penal Code effective January 1, 2019. (Penal Code §§ 1170.95 (a), (1), (2), and (3);
> >
> > b) If the Court reviews the petition and determines that the petitioner has proven the *prima facie* showing that he/she qualifies for resentencing who has requested a counsel, the court appoints a counsel to represent the petitioner. The Counsel will have to prepare for attendance at the resentencing hearing. (Penal Code § 1170.95 (c));

> The petitions for review are granted. The issues to be briefed and argued are limited to the following: (1) Does Senate Bill No. 1437 (Stats. 2018, ch. 1015) apply to attempted murder liability under the natural and probable consequences doctrine? (2) In order to convict an aider and abettor of attempted willful, deliberate and premeditated murder under the natural and probable consequences doctrine, must a premeditated attempt to murder have been a natural and probable consequence of the target offense? In other words, should *People v. Favor* (2012) 54 Cal.4th 868, 143 Cal.Rptr.3d 659, 279 P.3d 1131 be reconsidered in light of *Alleyne v. United States* (2013) 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 and *People v. Chiu* (2014) 59 Cal.4th 155, 172 Cal.Rptr.3d 438, 325 P.3d 972?

[82] Exhibit A, Test Claim, filed December 31, 2019, page 5.

[83] Exhibit A, Test Claim, filed December 31, 2019 (Section 5), page 2.

> c) In preparing for and appearing at the re-sentencing hearing, counsel will have to review discovery, read transcripts, interview the defendant, retain experts, utilize investigators, review reports prepared by experts and investigators, and draft legal briefs for presentation to the court. (Penal Code §§ 1170.95 (c) & (d) (1)); and
>
> d) Participation of counsel in training to competently represent the petitioners. (Penal Code§ 1170.95 (c))

On average, it will take at least: a) 25 hours per case excluding visitation with clients, b) additional investigation hours, and c) four (4) to five (5) hours of research. In total, a minimum of 30 hours per case.[84] [¶] . . . [¶]

> [A]fter the petitioner serves his/her petition on the prosecution, the prosecutor shall:
>
> a) File a response within 60 days of service of the petition. The petitioner may file and serve a reply within 30 days after the prosecutor response is served. If the petitioner makes a *prima facie* showing that he or she is entitled to relief, the court shall issue an order to show cause. Within 60 days after the order to show cause is issued, the court will set a resentencing hearing date. (Penal Code § 1170.95 (c))
>
> b) Preparation and attendance at the resentencing hearing. (Penal Code§ 1170.95 (d) (1))
>
> c) To prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. The prosecutors may rely on the record of conviction or offer new or additional evidence to meet their respective burdens or request additional documents. (Penal Code § 1170.95 (d) (3))
>
> d) Retention and utilization of experts to evaluate the petitioner's eligibility for resentencing. (Penal Code§ 1170.95 (d) (3))
>
> e) Participation of counsel in training for a competent prosecution. (Penal Code § 1170.95 (d) (3))

On average, it will take at least 20 hours per case for obtaining documents, reviewing voluminous records, writing responses, and litigating in court. Some cases require significantly more research and development time due to the loss of records that will be used to establish the firm basis for the petition.[85]

---

[84] Exhibit A, Test Claim, filed December 31, 2019 (Section 5), pages 14-15. Footnotes omitted. See also Section 6, Declaration of Harvey Sherman, the Deputy-in-Charge of the Public Integrity Assurance Section, Los Angeles County Public Defender's Office, pages 22-24.

[85] Exhibit A, Test Claim, filed December 31, 2019 (Section 5), pages 15-16. Footnotes omitted. See also Section 6, Declaration of Brock Lunsford, the Deputy-in-Charge of the Murder Resentencing Unit, County of Los Angeles District Attorney's Office, pages 25-28.

The claimant alleged the following costs of complying with the requirements of the test claim statute:

Department	**FY 2018-19**	**FY 2019-20**
District Attorney	$1,592,284	$1,295,852
Public Defender	$ 206,496	$ 471,595
Total	**$1,798,780**	**$1,767,447**[86]

Relying on the statistics provided to the Senate Committee on Appropriations by the California Department of Corrections and Rehabilitation, the claimant concluded "there would be a statewide cost estimate of about $18,153,459."[87]

The claimant alleges that there are no funding sources to cover these costs.[88] Finally, the claimant alleges that "none of the exceptions in Government Code Section 17556 excuse the state from reimbursing Claimant for the costs associated with the implementing the required activities."[89]

In its comments on the Draft Proposed Decision, the claimant disagrees with the conclusion that test claim statute eliminated a crime within the meaning of Government Code section 17556(g).[90] The claimant argues that the test claim statute amended Penal Code sections 188 and 189 to limit their application to the felony-murder rule and the natural and probable consequences doctrine, which are legal theories and not crimes.[91]

The claimant further argues that Penal Code section 1170.95 sets forth a post-conviction proceeding allowing convicted individuals to petition the court to vacate their murder convictions. The claimant asserts that the right to counsel attaches in a criminal proceeding before conviction and the claimant is not seeking reimbursement of those costs. Post-conviction proceedings do not invoke a constitutional right to counsel. The test claim statute, however,

---

[86] Exhibit A, Test Claim, filed December 31, 2019 (Section 5), page 16; see also Section 6, Declaration of Sung Lee, Departmental Finance Manager, Los Angeles County Public Defender's Office, pages 29-32 and Declaration of Ping Yu, Accounting Officer, County of Los Angeles District Attorney's Office, pages 37-39.

[87] Exhibit A, Test Claim, filed December 31, 2019 (Section 5), page 18; see also Exhibit I, Senate Committee on Appropriations, Analysis of Senate Bill 1437 (2017-2018 Reg. Sess.) May 14, 2018, page 3.

[88] Exhibit A, Test Claim, filed December 31, 2019 (Section 5), page 10.

[89] Exhibit A, Test Claim, filed December 31, 2019 (Section 5), page 13.

[90] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, pages 2, 4.

[91] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 4.

compels the counties to provide representation in the post-conviction proceeding set forth in Penal Code section 1170.95.[92]

Finally, the claimant argues that even if the test claim statute eliminated a crime, the post-conviction proceeding does not directly relate to the enforcement of any crime within the meaning of Government Code section 17556(g). The post-conviction proceeding "is separate and apart from the pre-conviction enforcement of the crime of murder."[93] The proceeding itself is not a simple motion, but rather a complicated procedure akin to a civil commitment under the Sexually Violent Predators Act or a habeas corpus proceeding.[94] The handling of the petitions by the Los Angeles County District Attorney's Office is time consuming work with voluminous records requiring review and reinvestigation.[95] As a result, a new unit was created within the office.[96] The Los Angeles County District Attorney's Office received 2,036 petitions as of July 2020 with attorneys spending about 20 hours per case. The claimant estimates that it could potentially receive 9,704 petitions.[97] The Los Angeles County Public Defender's Office received 898 petitions with attorneys spending about 25 hours per case.[98] The fact-finding nature of the post-conviction proceeding to determine if relief can be granted has nothing to do with the enforcement of the prohibition against murder.[99]

The claimant reports the actual costs for the Public Defender's Office was $206,496 for fiscal year 2018-2019 and estimates that it will incur $471,595 to comply with the test claim statute in fiscal year 2019-2020.[100]

---

[92] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, pages 2-3.

[93] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 4.

[94] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, pages 4-5.

[95] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 7 (Declaration of Brock Lunsford).

[96] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 8 (Declaration of Brock Lunsford).

[97] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 9 (Declaration of Brock Lunsford).

[98] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 12 (Declaration of Harvey Sherman).

[99] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 5.

[100] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 15 (Declaration of Sung Lee).

The claimant urges the Commission to find that the test claim statute imposes a reimbursable state mandate.[101]

B. Department of Finance

Finance filed comments on June 19, 2020, recommending that the Commission deny the test claim as follows: "Finance believes SB 1437 is subject to Government Code section 17556, subdivision (g), the 'crimes and infractions' exclusion since SB 1437 changed the application of and the penalty for the felony murder rule. Accordingly, the Commission should deny this claim because SB 1437 does not impose costs mandated by the state."[102]

Finance did not file comments on the Draft Proposed Decision.

C. Chair of the San Joaquin County Board of Supervisors

The Chair of the San Joaquin County Board of Supervisors filed comments on behalf of the Board of Supervisors in support of the Test Claim. Noting that the test claim statute "redefined liability in first-degree and second-degree murder convictions" and established "a statutory mechanism" to allow convicted inmates and parolees to retroactively overturn their murder convictions, the Board of Supervisors concludes that the test claim statute is an unfunded state mandate.[103] The Chair explains that "there is significant workload associated with reviewing petitions, including reviewing each homicide file in order to assess and make a determination on the number of eligible defendants and which petition filings to prioritize. These extensive files include: trial transcripts, crime reports, investigation, motions, probation reports and other documents to determine initial eligibility."[104] Relying on data from the California Department of Corrections, there are 432 individuals from San Joaquin County that are currently incarcerated for murder in the first- or second-degree and another 78 on parole for such convictions. New staff have been hired to address the 107 petitions filed to overturn murder convictions to date and eligible applicants could exceed 500. The Chair asserts, that implementation costs for San Joaquin County District Attorney and Public Defender are $1,648,657 as of July 17, 2020.[105] The Chair agrees with the claimant that the test claim statute imposes a reimbursable state mandated program.[106]

---

[101] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 5.

[102] Exhibit B, Finance's Comments on the Test Claim, filed June 19, 2020, page 2.

[103] Exhibit D, San Joaquin County, Board of Supervisors' Chair's Comments on the Draft Proposed Decision, filed July 17, 2020, page 1.

[104] Exhibit D, San Joaquin County, Board of Supervisors' Chair's Comments on the Draft Proposed Decision, filed July 17, 2020, page 1.

[105] Exhibit D, San Joaquin County, Board of Supervisors' Chair's Comments on the Draft Proposed Decision, filed July 17, 2020, page 1.

[106] Exhibit D, San Joaquin County, Board of Supervisors' Chair's Comments on the Draft Proposed Decision, filed July 17, 2020, page 2.

D. California Public Defenders Association

The California Public Defenders Association (CPDA) filed late comments in support of the Test Claim. CPDA disagrees with the analysis and conclusion of Finance and the Draft Proposed Decision on two grounds: "(1) No crime was eliminated by SB 1437's amendments to sections 188 and 189; these amendments merely modified the elements of an existing crime, the crime of Murder, and (2) Even if SB 1437 could be viewed as eliminating a crime, Penal Code section 1170.95, the resentencing provision of SB 1437, does not "relate directly to the enforcement of the crime or infraction."[107]

CPDA argues its first ground explaining that murder has been a crime in California since being codified as Penal Code section 187 in 1872. So, too, malice has been defined in Penal Code section 188 since 1872. Through the test claim statute, the Legislature clarified that malice would no longer be imputed to an individual based solely on that individual's participation in a crime. Thus CPDA concludes that the crime of murder was not eliminated nor was the penalty changed, but the definition of malice was amended. CDPA also asserts that the test claim statute also amended Penal Code section 189, but again, not to eliminate the crime of murder, nor to change the penalty, but to clarify the circumstances under which an individual can be liable for the crime of murder.[108]

CPDA argues its second ground noting that Government Code section 17556(g) includes the language "but only for that portion of the statute *relating directly to the enforcement* of the crime or infraction."[109] CPDA explains, "Assuming, arguendo, that SB 1437, in part, eliminated a class of conduct formerly punishable as murder (death resulting from certain felonious acts committed by a person acting as an aider or abettor to the principal, who was not the killer, did not intend to kill another person, was not a major participant, and did not display reckless indifference to human life), the resentencing statute enacted by SB 1437, Penal Code section

---

[107] Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020, page 1. Pursuant to 1183.6(d) of the Commission's regulations, "[i]t is the Commission's policy to discourage the introduction of late comments, exhibits, or other evidence filed after the three-week comment period. . . The Commission need not rely on, and staff need not respond to, late comments, exhibits, or other evidence submitted in response to a draft proposed decision after the comment period expires." However, in this case, although the CPDA filed comments approximately three and one-half weeks after they were due and without requesting an extension of time, it was feasible to consider the comments in the Proposed Decision since the matter had already been postponed at the request of the claimant. In the future, such late comments without an approved extension may be simply added to the record but not added to, considered, or discussed, in the decision after they were due and without requesting an extension of time.

[108] Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020, page 2.

[109] Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020, page 2. Emphasis in citation.

1170.95, does *not* relate directly to the *enforcement* of any crime."[110] Relying on the Meriam Webster definition, CPDA asserts that "enforce the law" is generally understood as "make sure that people obey the law," which makes no sense when applied to the proceedings described in Penal Code section 1170.95. These proceedings do not ensure that individuals follow the law, and they do not enforce the law; rather, they enforce justice. Resentencing proceedings provide relief to those who committed acts but whose treatment under prior law was unjust. "When it enacted SB 1437, the California Legislature concluded that it was unjust to punish certain felonious acts resulting in unintended deaths as Murder, and so, in addition to amending Penal Code sections 188 and 189, it enacted Penal Code section 1170.95, to restore justice to those eligible individuals who were convicted and sentenced for the crime of Murder based on felonious acts they committed in the past, but who could not be convicted of murder today. This cannot reasonably come within the meaning of 'law enforcement.'"[111]

CPDA concludes that SB 1437 has produced a considerable financial burden on counties to handle the "complex postconviction proceedings" and these costs are reimbursable. CPDA urges the Commission to grant the test claim.[112]

E. County of San Diego

The County of San Diego filed comments on the Draft Proposed Decision, asserting that Penal Code section 1170.95 does not eliminate a crime, but "simply creates a post-conviction petition procedure."[113] The County states that the placement of Penal Code section 1170.95 under Part 2, "Of Criminal Procedure" and not under Part 1 "Of Crimes and Punishments" is indicative of the fact that the section sets forth a procedure rather than a crime, noting that this approach was persuasive in the Decision in *Youth Offender Parole Hearings*, 17-TC-29.[114] Also, Penal Code section 1170.95 does not change the penalty for a crime within the meaning of Government Code section 17556(g). "Section 1170.95 provides a methodology to vacate a sentence based on the assumption that the crime of murder was not even committed."[115] The County asserts that the changes to Penal Code sections 188 and 189 neither changed the crime of murder, nor did they eliminate a crime. "Those sections merely changed a **theory of liability** for the crime of murder.

---

[110] Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020, page 3. Emphasis in citation.

[111] Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020, page 3.

[112] Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020, page 3.

[113] Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, page 1.

[114] Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, page 1, footnote 1.

[115] Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, page 2, footnote 2.

The crime of murder still exists."[116] The County points to the fact that a jury need not reach a unanimous decision on the theory of liability. They must only agree that the defendant is liable for murder to convict. The Commission, however, need not reach this issue as the Test Claim seeks reimbursement for costs solely incurred due to the resentencing petition process which is found only in Penal Code section 1170.95.[117]

Specifically, the County argues, Penal Code section 1170.95 is a separate statute and should be analyzed independently from Penal Code sections 188 and 189 as to whether section 1170.95 eliminated a crime. The County states that the Draft Proposed Decision analyzes the sections separately as to whether they impose requirements on local government and the analysis as to whether they eliminate a crime should be no different.[118] Since the Draft Proposed Decision acknowledges that Penal Code section 1170.95 is a petition and hearing process, the County concludes, "[t]his petition and hearing process provides a method to reverse a conviction, but it does not change the crime of murder itself. [citation] Accordingly, Section 1170.95 does not fall within the exception set forth in [Government Code] Section 17556(g)."[119]

F. Alameda County Public Defender's Office

The Alameda County Public Defender's Office filed late comments on the Draft Proposed Decision explaining: "Alameda County is the seventh largest county in the state. In 2019 alone, our office was appointed to represent 86 habeas corpus petitioners who were seeking relief under Penal Code section 1170.95; One full time and two part time attorneys were assigned to handle these cases. They worked more than 3300 hours and, by year's end, had resolved 56 of them."[120]

---

[116] Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, page 2, footnote 3. Emphasis in original.

[117] Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, page 2, footnote. 3.

[118] Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, pages 2-3.

[119] Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, page 3. Citation omitted in the original.

[120] Exhibit H, Alameda County Public Defender's Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 1. Pursuant to 1183.6(d) of the Commission's regulations, "[i]t is the Commission's policy to discourage the introduction of late comments, exhibits, or other evidence filed after the three-week comment period. . . The Commission need not rely on, and staff need not respond to, late comments, exhibits, or other evidence submitted in response to a draft proposed decision after the comment period expires." However, in this case, although the Office filed comments approximately one month after they were due and without requesting an extension of time, it was feasible to consider the comments in the Proposed Decision since the matter had already been postponed at the request of the claimant. In the future, such late comments without an approved extension may be simply added to the record but not added to, considered, or discussed, in the decision.

The Office asserts that the test claim statute did not eliminate a crime, rather SB 1437 modified the scope of malice aforethought.[121] Penal Code section 189(f) narrows the scope of the new law by stating that a defendant that kills a police officer while committing a felony is guilty of felony murder regardless of intent and, thus, the crime of murder was not eliminated.[122] Further, the case law confirms that while the changes to Penal Code sections 188 and 189 modified the scope of murder, these changes did not eliminate any crime nor eliminate the felony murder or natural and probable consequences theories, themselves. The court in *People v. Superior Court (Gooden)* noted that SB 1437 only amended the mens rea, or mental state, requirement for murder.[123] The court in *People v. Solis* noted that SB 1437 limited the application of the felony-murder rule and the natural and probable consequences doctrine by changing the mens rea element.[124] In *People v. Cervantes*, the court stated, "SB 1437 modified the felony murder rule and natural and probable consequences doctrine to ensure murder liability is not imposed on someone unless they were the actual killer, acted with the intent to kill, or acted as a major participant in the underlying felony and with reckless indifference to human life."[125] The court in *People v. Martinez* noted that SB 1437 changed the definitions of malice and murder.[126] In *People v. Gentile,*[127] the court rejected the argument that SB 1437 eliminated murder liability under the natural and probable consequences theory:

---

[121] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 1-2.

[122] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 2.

[123] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 2, citing *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 281, 287.

[124] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 2, citing *People v. Solis* (2020) 46 Cal.App.5th 762, 768-769.

[125] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 2, citing *People v. Cervantes* (2020) 46 Cal.App.5th 213, 220.

[126] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 2, citing *People v. Martinez* (2019) 31 Cal.App.5th 719, 722.

[127] *People v Gentile* (2019) 35 Cal.App.5th 932, review granted September 11, 2019 (California Supreme Court Case No. S256698), on the following question:

> The petition for review is granted. The issues to be briefed and argued are limited to the following: 1. Does the amendment to Penal Code section 188 by recently enacted Senate Bill No. 1437 eliminate second degree murder liability under the natural and probable consequences doctrine? 2. Does Senate Bill No. 1437 apply retroactively to cases not yet final on appeal? 3. Was it prejudicial error to instruct the jury in this case on natural and probable consequences as a theory of murder?

> …"defendant argues that the amendment to section 189, "has now eliminated all murder liability, including second degree murder liability, based on the natural and probable consequences doctrine." *We disagree.* This argument proposes a construction of section 189, subdivision (e), which is contrary to the plain language of the statute, misconstrues the holding in *Chiu,* and would lead to absurd results. Contrary to defendant's interpretation, section 189, subdivision (e) does not eliminate all murder liability for aiders and abettors. To the contrary, the amendment expressly provides for both first and second degree murder convictions under appropriate circumstances."[128]

The Alameda County Public Defender's Office concludes: "Of the nearly two dozen published cases interpreting SB 1437, not a single one has said that it eliminated a crime."[129]

The Office asserts that the test claim statute did not change the penalty for a crime within the meaning of Government Code section 17556(g)[130] and the Draft Proposed Decision did not analyze whether Penal Code section 1170.95 is directly related to the enforcement of a crime or infraction as set forth in Government Code section 17556(g). Noting that the "30 or so cases that have invoked section 17556 have never defined the word 'enforcement,'" the Office relies on the Black's Law Dictionary's definition "to compel obedience to" and Webster's definition "to compel observance of a law."[131] The Office asserts that section 1170.95 does not compel obedience to the law nor does it apply to the arrest or prosecution of individuals for murder. Section 1170.95 is a resentencing statute. Even if SB 1437 eliminated a crime, section 1170.95 does not relate directly to the enforcement of the crime of murder as defined in Penal Code sections 188 and 189. The Office urges the Commission to grant the Test Claim, explaining that "Penal Code section 1170.95 petitions involve complex legal issues that require experienced counsel and substantial amounts of legal research, writing and courtroom litigation. It has placed a considerable burden on our office's staff as well as our budget."[132]

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Oral argument was heard on October 7, 2020. This case is currently pending and additional briefing has been ordered on the retroactivity of SB 1437.

[128] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 3 citing *People v Gentile* (2019) 35 Cal.App.5th 932, 943-944. Emphasis in original.

[129] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, pages 2-3.

[130] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 3.

[131] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 3-4.

[132] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 4.

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service ….

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[133] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …."[134]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[135]
2. The mandated activity constitutes a "program" that either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[136]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[137]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[138]

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[139] The determination whether a statute or executive order imposes a reimbursable

---

[133] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[134] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[135] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[136] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 [reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56].

[137] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[138] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[139] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

state-mandated program is a question of law.[140] In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[141]

A. The Test Claim Was Timely Filed.

Government Code section 17551(c) states: "test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring costs as a result of a statute or executive order, whichever is later." Section 1183.1(c) of the Commission's regulations, effective April 1, 2018, defines "12 months" as 365 days.[142]

The test claim statute became effective on January 1, 2019,[143] resulting in a January 1, 2020 deadline for the filing of a test claim. The claimant filed this Test Claim on December 31, 2019, within twelve months of the effective date.[144] Accordingly, this Test Claim was timely filed.

B. Penal Code Sections 188 and 189, as Amended by the Test Claim Statute, Do Not Impose Any Requirements on Local Government.

As indicated in the Background, the test claim statute amended sections 188 and 189 of the Penal Code, which define "malice" and "murder," to limit the application of the felony-murder rule and the natural and probable consequences doctrine to the actual killer, someone with the intent to kill who assisted the killer, or a major participant in the crime who acted with reckless indifference to human life. These code sections do not impose any requirements on local government and, thus, they do not impose a state-mandated program.

C. Penal Code Section 1170.95, as Added by the Test Claim Statute, Does Not Impose "Costs Mandated by the State" Within the Meaning of Article XIII B, Section 6 of the California Constitution and Government Code Section 17556(g).

Penal Code section 1170.95 imposes requirements on county district attorneys and public defenders. However, those requirements do not impose costs mandated by the state.

1. Penal Code section 1170.95 allows a person convicted of first- or second-degree murder under the felony-murder rule or the natural and probable consequences doctrine to file a petition to have their conviction vacated and to be resentenced, and imposes new requirements on counties to prosecute and defend that petition.

As indicated in the Background, the claimant seeks reimbursement for costs associated with Penal Code section 1170.95, which sets forth a petition and hearing process for persons convicted of first- or second-degree murder under the felony-murder rule or the natural and

---

[140] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[141] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[142] California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

[143] Statutes 2018, chapter 1015.

[144] Exhibit A, Test Claim, filed December 31, 2019, page 1.

probable causes doctrine to seek to vacate their conviction and to be resentenced, when it is alleged that the petitioner did not have the intent to kill or was not a major participant in the crime acting with reckless indifference to human life.[145]

The process begins with a person convicted under the felony-murder rule or the natural and probable consequences doctrine filing a petition with the sentencing court and serving the petition on the county district attorney and the petitioner's defense counsel or the county public defender.[146] The statute states that the person convicted will file the petition. The claimant alleges that the petitioner has a statutory right to counsel and, thus, the petitioner's defense counsel will write, file, and serve the petition.[147] The right to counsel is specifically conferred by the statute, however, the California Supreme Court will determine when the right to counsel under section 1170.95 attaches, in the case of *People v. Lewis* which is currently pending.[148] In that case, the petitioner requested a review under Penal Code section 1170.95 and sought the appointment of counsel.[149] The trial court denied the petition without hearing and without appointing counsel.[150] On appeal, the court held that the petitioner's right to counsel derived from the statute, but only after an initial review of the petition by the court. The court relied on the steps listed in Penal Code section 1170.95(c) which require that the court "review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section" and, if so, the court appoints defense counsel if requested.[151]

After the petition is filed and served, the plain language of the test claim statute requires county district attorneys to file and serve a response to a petition within 60 days from the date the

---

[145] Penal Code section 1170.95(a).

[146] Penal Code section 1170.95(a) and (b)(1).

[147] Exhibit A, Test Claim, filed December 31, 2019, page 14. The claimant also states that the right to counsel is not constitutional, but given by Penal Code section 1170.95. (Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, pages 2-3.) The claimant is correct. (See, *People v. Perez* (2018) 4 Cal.5th 1055, 1063-1064, and *Pennsylvania v. Finley* (1987) 481 U.S. 551, 555, which hold that there is no constitutional right to counsel when mounting collateral attacks on the conviction.)

[148] *People v. Lewis* (2020) 43 Cal.App.5th 1128 review granted March 18, 2020 (California Supreme Court, Case No. S260598), on the following question:

> The petition for review is granted. The issues to be briefed and argued are limited to the following: (1) May superior courts consider the record of conviction in determining whether a defendant has made a prima facie showing of eligibility for relief under Penal Code section 1170.95? (2) When does the right to appointed counsel arise under Penal Code section 1170.95, subdivision (c).

[149] *People v. Lewis* (2020) 43 Cal.App.5th 1128 review granted March 18, 2020 (California Supreme Court, Case No. S260598).

[150] *People v. Lewis* (2020) 43 Cal.App.5th 1128, 1134.

[151] *People v. Lewis* (2020) 43 Cal.App.5th 1128, 1139-1140.

petition is served.[152] If the parties agree or if the court or jury at the original trial made specific findings that the petitioner did not act with reckless indifference to human life or was not a major participant in the felony, the parties can waive the hearing and, in such cases, the court shall vacate the petitioner's conviction and resentence the petitioner without a hearing.[153] If the court sets a hearing, the district attorney bears the burden of proof to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing.[154] If the prosecution fails to sustain its burden of proof, the prior conviction, and any allegations and enhancements attached to the conviction, shall be vacated and the petitioner shall be resentenced on the remaining charges. The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.[155]

In California, indigent defendants in criminal proceedings are represented by the county public defender's office and the people are represented by the county district attorney's office. Therefore, county district attorneys and public defenders representing indigent defendants who are appointed under Penal Code section 1170.95(c) are required to represent their clients in the petition process and hearing pursuant to Penal Code section 1170.95, and these requirements are new.

2. The requirements imposed on counties by Penal Code section 1170.95 do not result in costs mandated by the state because the test claim statute eliminates a crime within the meaning of Government Code section 17556(g).

Article XIII B, section 6 is not intended to provide reimbursement for the enforcement or elimination of crime. Government Code section 17556(g), which implements article XIII B, section 6 and must be presumed constitutional by the Commission,[156] provides that the Commission "shall not find costs mandated by the state" when the "statute or executive order created a new crime or infraction, *eliminated a crime or infraction*, or changed the penalty for a crime or infraction, but only for that portion of the statute directly relating to the enforcement of the crime or infraction." This exception to the reimbursement requirement is intended to allow the State to exercise its discretion when addressing public safety issues involving crimes, without having to consider whether reimbursement to local government would be required under article XIII B, section 6 as a result of its actions.[157] As described below, the test claim statute eliminates a crime or infraction under Government Code section 17556(g) and, thus, there are no costs mandated by the state.

---

[152] Penal Code section 1170.95(c).

[153] Penal Code section 1170.95(d)(2).

[154] Penal Code section 1170.95(d)(3).

[155] Penal Code section 1170.95(d)(3).

[156] California Constitution, article III, section 3.5.

[157] *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1191 (recognizing the three exceptions to reimbursement, as stated in article XIII B, section 6(a), as "(1) mandates requested by the local government, (2) legislation concerning crimes, and (3) mandates implemented prior to January 1, 1975.").

Under prior law, the felony-murder rule and the natural and probable consequences doctrine allowed the prosecution to convict a defendant of murder without proving the defendant's state of mind.[158] The test claim statute changed that. One of the reasons the test claim statute was enacted was "to limit convictions and subsequent sentencing so that the law of California fairly addresses the culpability of the individual and assists in the reduction of prison overcrowding, which partially results from lengthy sentences that are not commensurate with the culpability of the individual."[159]

Thus, as amended, Penal Code sections 188 and 189 now require proof beyond a reasonable doubt that the defendant intended to kill or that the defendant was a major participant in the crime who acted with reckless indifference to human life in order for the defendant to be found guilty of first- or second-degree murder. As explained in *Gooden*, these amendments changed the elements of the crime of murder by now requiring proof that the defendant had the requisite mental state at the time of the crime to support a conviction of murder.[160] A conviction of murder can no longer be found when malice is imputed or implied based solely on the defendant's participation in a crime.

Penal Code section 1170.95 was enacted to provide a petition and hearing process by which those convicted of first- or second-degree murder under the felony murder rule or the natural and probable consequences doctrine, who would not have been convicted of murder under the Penal Code sections 188 and 189 as amended by the test claim statute, to obtain a review by filing a petition to have the murder conviction vacated and to be resentenced on any remaining counts. Penal Code section 1170.95(d) states that the court shall "vacate the murder conviction and . . . recall the sentence when:

- The parties stipulate that the petitioner is eligible to have his or her murder conviction vacated and for resentencing.
- The court or jury at the original trial made specific findings that the petitioner did not act with reckless indifference to human life or was not a major participant in the felony.
- The district attorney fails to sustain its burden of proof, beyond a reasonable doubt, that the petitioner is ineligible to have the murder conviction vacated and for resentencing; in other words, the district attorney fails to prove that the petitioner intended to kill or was a major participant in the crime and acted with reckless indifference to human life.

Thus, the test claim statute eliminates the crime of murder under the felony-murder rule and the natural and probable consequences doctrine for those who either lacked intent to kill or who were not major participants acting with reckless indifference to human life.

The claimant and local agency interested parties and interested persons argue that the test claim statute did not eliminate a crime. They argue that the amendments to Penal Code sections 188 and 189 modified the element of malice in the existing crime of murder and limited the

---

[158] Penal Code section 189, as last amended by Statutes 2010, chapter 178; *People v. Dillon* (1983) 34 Cal.3d 441, 467-468; *People v. Chiu* (2014) 59 Cal.4th 155, 158.

[159] Statutes 2018, chapter 1015, section 1(e).

[160] *People v. Superior Court (Gooden)* (2019) 42 Cal.App.5th 270, 282.

application of legal theories that give rise to liability for murder.[161] In support of their position, the Alameda County Public Defender's Office cites several cases including *People v. Gentile.* The Office asserts that the *Gentile* court rejected the argument that the test claim statute eliminated murder liability under the natural and probable consequences theory.[162] Finally, the claimant, interested parties, and interested persons argue that even if the test claim statute eliminated a crime, the petition and hearing process set forth in Penal Code section 1170.95 does not directly relate to the enforcement of any crime within the meaning of Government Code section 17556(g).[163]

The Commission disagrees with these comments. It is correct that the test claim statute modified the element of malice. As stated in Penal Code section 188, malice shall no longer be imputed to a person based solely on his or her participation in a crime. However, there is no question that persons who lack intent to kill while committing other felonies, or who are not major participants acting with reckless indifference to human life, may no longer be found guilty of murder as a result of the test claim statute. If the crime of murder under these circumstances was not eliminated, there would be no need to have the process set forth in section 1170.95 to petition the court to *vacate* the murder conviction.

Furthermore, the parties' reading of *People v. Gentile* is not correct. In *Gentile*, the defendant argued that the amendment to Penal Code section 189 by the test claim statute "has now eliminated all murder liability, including second degree murder liability, based on the natural and probable consequences doctrine."[164] The court disagreed that the statute eliminated *all* murder liability.[165] The court quoted the plain language of Penal Code section 189(e), as amended by the test claim statute, which now provides that a person may still be convicted of murder if the person is the actual killer, has the intent to kill, or was a major participant in the underlying felony and acted with reckless indifference to human life:

---

[161] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, pages 2, 4; Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020, page 2; Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, pages 1-2; Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, pages 1-2.

[162] Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, page 3, citing *People v Gentile* (2019) 35 Cal.App.5th 932, 943-944.

[163] Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 14, 2020, page 4; Exhibit E, California Public Defenders Association's Late Comments on the Draft Proposed Decision, filed August 10, 2020, page 3; Exhibit F, County of San Diego's Comments on the Draft Proposed Decision, filed August 14, 2020, pages 2-3; Exhibit H, Alameda County Public Defenders' Late Comments on the Draft Proposed Decision, filed August 17, 2020, pages 3-4.

[164] *People v Gentile* (2019) 35 Cal.App.5th 932, 943-944.

[165] *People v Gentile* (2019) 35 Cal.App.5th 932, 944.

> A participant in the perpetration or attempted perpetration of a felony listed in subdivision (a) in which a death occurs is liable for murder only if one of the following is proven: [¶] (1) The person was the actual killer. [¶] (2) The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree. [¶] (3) The person was a major participant in the underlying felony and acted with reckless indifference to human life, as described in subdivision (d) of Section 190.2.[166]

The test claim statute and the court cases make it clear, however, that the crime of murder has been eliminated for those persons who lack intent to kill while committing other felonies, or who are not major participants acting with reckless indifference to human life, as they may no longer be found guilty of murder. The test claim statute "amend[s] the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is *not imposed* on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life."[167]

The Commission also disagrees with the argument that, even if the test claim statute eliminated a crime, the petition and hearing process set forth in Penal Code section 1170.95 does not directly relate to the enforcement of any crime within the meaning of Government Code section 17556(g). This interpretation of section 17556(g) is not supported by the plain language of the statute or with past decisions of the Commission. Government Code section 17556(g) provides that the Commission "shall not find costs mandated by the state" when the "statute or executive order created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute directly relating to the enforcement of the crime or infraction." The "but only" clause affects only the last provision or antecedent before the comma ("changed the penalty for a crime or infraction"), but is not relevant and has no effect on the first two provisions when the test claim statute creates or eliminates a crime or infraction.

The first step in the interpretation of statutory language is to give the words their plain and ordinary meaning. Where these words are unambiguous, they must be applied as written and may not be altered in any way. In addition, statutes must be given a reasonable and common sense construction designed to avoid absurd results.[168] Section 17556(g) contains the modifier, "but only for that portion of the statute relating directly to the enforcement of the crime or infraction." To avoid ambiguity, rules of grammar suggest that modifiers be placed next to the word they modify.[169] Also known as the "last antecedent rule," this construction is not followed

---

[166] *People v Gentile* (2019) 35 Cal.App.5th 932, 943.

[167] *People v. Cervantes* (2020) 46 Cal.App.5th 213, 220, emphasis added.

[168] *Burden v. Snowden* (1992) 2 Cal.4th 556, 562; *People v. King* (1993) 5 Cal.4th 59, 69.

[169] Strunk & White, The Elements of Style (3d ed. 1979), page 30.

when strict adherence to the rules of grammar would result in statutory interpretation that contravenes legislative intent.[170]

Under the "last antecedent rule," the "but only" clause modifies only the third phrase: "changed the penalty for a crime or infraction." This application is in accordance with legislative intent and the rules of construction. It would not make sense for the "but only" clause to modify the first phrase, "created a new crime or infraction," because that exception to reimbursement is already provided for in article XIII B, section 6(b), of the California Constitution without the "but only" language.[171] Inserting the "but only" limitation in that instance would conflict with the Constitution.[172] Similarly, it would not make sense for the "but only" clause to modify the second phrase, "eliminated a crime or infraction," because an eliminated crime cannot be enforced. Thus, the "but only" language applies only to a statute that changes the penalty for a crime or infraction.

Although the Commission does not designate its past decisions as precedential, and old test claims do not have precedential value,[173] the Commission's findings in this matter are consistent with its prior decisions, all of which applied the "but only" language to changes in the penalty for a crime. Recently, in *Youth Offender Parole Hearings*, 17-TC-29, the claimant sought reimbursement for the costs of parole hearings to review the suitability for parole during the 15th, 20th, or 25th year of incarceration of any prisoner who was 25 or younger at the time of their controlling offense and was sentenced to 15 years or more, or who was sentenced to life in prison without the possibility of parole for an offense committed when the offender was under 18.[174] The Commission reasoned that incarceration and parole are part of the penalty for committing the underlying crime. The Commission found that Penal Code section 3051 changed the penalty for crimes within the meaning of Government Code section 17556(g) and denied reimbursement.[175]

In *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, the claimant sought reimbursement for the costs of additional research of the defendant's criminal history, increased trial rates and third strike appeals for both the district attorney and public defender's office, and

---

[170] 67 Ops.Cal.Atty.Gen. 452, 454 (1984).

[171] "[T]he Legislature may, but need not, provide such subvention of funds for the following mandates: [¶] (b) Legislation defining a new crime or changing an existing definition of a crime."

[172] See, *Harrott v. County of Kings* (2001) 25 Cal.4th 1138, 1151 ("A statute must be interpreted in a manner, consistent with the statute's language and purpose, that eliminates doubts as to the statute's constitutionality.")

[173] 72 Ops.Cal.Atty.Gen. 173, 178, footnote 2 (1989).

[174] Decision, *Youth Offender Parole Hearings*, 17-TC-29, September 27, 2019, https://www.csm.ca.gov/decisions/093019.pdf (accessed on September 25, 2020), pages 18-23.

[175] Decision, *Youth Offender Parole Hearings*, 17-TC-29, September 27, 2019, https://www.csm.ca.gov/decisions/093019.pdf (accessed on September 25, 2020), pages 53-54.

increased workload for its sheriff and probation departments.[176] The Commission reasoned that the Three Strikes law "changed the sentencing scheme by subjecting a double strike defendant to a penalty of double the term of imprisonment previously required under the Penal Code for the current crime committed" and that this constituted a change in the penalty for a crime pursuant to Government Code section 17556(g).[177] The Commission found that the plain meaning of the language of section 17556(g) ("enforcement of the crime or infraction") meant to carry out to completion of the penalty or punishment imposed by the criminal statute, and thus "encompasses those activities that directly relate to the enforcement of the statute that changes the penalty for the crime from arrest through conviction and sentencing."[178] The Commission found that Penal Code section 667 changed the penalty for a crime within the meaning of Government Code section 17556(g) and denied reimbursement.[179]

In *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01, the Commission found that changes to Penal Code section 1203.097, which required counties to perform several activities to assess convicted domestic violence offenders who were ordered to complete a batterer's program as part of the terms and conditions of probation, were not reimbursable as they were directly related to the enforcement of the crime under Government Code section 17556(g).[180] However, the Commission approved the activities required by the test claim statutes to generally administer the batterer treatment program, provide services to victims of domestic violence, and to assess the future probability of the defendant committing murder, on the ground that these activities were not directly related to the enforcement of the offender's domestic violence crime.[181]

In *Child Abuse Treatment Services Authorization and Case Management*, 98-TC-06, the Commission found that modification to Penal Code sections 273a, 273d, and 273.1, which made changes to the criteria for treatment programs required by the terms and conditions of probation for convicted child abusers, did not impose costs mandated by the state pursuant to Government

---

[176] Decision, *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, June 25, 1998, https://csm.ca.gov/decisions/4503sod.pdf (accessed on September 25, 2020), page 6.

[177] Decision, *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, June 25, 1998, https://www.csm.ca.gov/decisions/4503sod.pdf (accessed on September 25, 2020), pages 6-7.

[178] Statement of Decision, *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, June 25, 1998, https://www.csm.ca.gov/decisions/4503sod.pdf (accessed on September 25, 2020), pages 8-9.

[179] Statement of Decision, *Sentencing: Prior Felony Convictions (Three Strikes)*, CSM-4503, June 25, 1998, https://www.csm.ca.gov/decisions/4503sod.pdf (accessed on September 25, 2020).

[180] Statement of Decision, *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01, April 23, 1998, https://www.csm.ca.gov/decisions/213.pdf (accessed on September 25, 2020), pages 6-8.

[181] Statement of Decision, *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01, April 23, 1998, https://www.csm.ca.gov/decisions/213.pdf (accessed on September 25, 2020), pages 9-11.

Code section 17556(g).[182] Using a similar analysis to the one in *Domestic Violence Treatment Services – Authorization and Case Management*, CSM-96-281-01, the Commission found that the modification in law changed the penalty for convicted child abusers.[183] The Commission, however, approved reimbursement for the activities required to develop or approve a child abuser's treatment counseling program, as these activities were not directly related to the enforcement of the underlying crime.[184]

Unlike the statutes at issue in each of the cited Commission Decisions, the test claim statute here does not change a penalty for a crime, but rather eliminates a crime and, thus the "but only" language does not apply here.

Additionally, even if the "but only" language applied to the elimination of a crime or infraction, the process set forth in Penal Code section 1170.95 is directly related to the enforcement of the crime of murder when construed in context with the amendments to Penal Code sections 188 and 189.

In analyzing statutes, "[t]he meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible."[185] As set forth in detail above, changes to Penal Code sections 188 and 189 eliminated the crime of murder within the meaning of Government Code section 17556(g) for aiders and abettors by limiting the application of the felony-murder rule and the natural and probable consequences doctrine. Penal Code section 1170.95 established a petition and hearing process for aiders and abettors already convicted under the prior law to use current law to vacate their convictions. This petition and hearing process is not a stand-alone process, but instead is inexorably linked to the amendments to section 188 and 189 and therefore part of the elimination of a crime under Government Code section 17556(g).

The rest of the analysis turns on the definition of the phrase "the enforcement of the crime or infraction." As there is no court decision interpreting Government Code section 17556(g), the Commission may rely on a dictionary definition. Black's Law Dictionary defines enforcement as "[t]he act or process of compelling compliance with a law, mandate, command, decree, or agreement." [186] This definition is easy to understand within the parameters of compelling compliance with a new criminal law. The government enforces the new criminal law by

---

[182] Statement of Decision, *Child Abuse Treatment Services Authorization and Case Management*, 98-TC-06, September 29, 2000, https://www.csm.ca.gov/decisions/98tc06sod.pdf (accessed on September 25, 2020), page 9.

[183] Statement of Decision, *Child Abuse Treatment Services Authorization and Case Management*, 98-TC-06, September 29, 2000, https://www.csm.ca.gov/decisions/98tc06sod.pdf (accessed on September 25, 2020), pages 6-9.

[184] Statement of Decision, *Child Abuse Treatment Services Authorization and Case Management*, 98-TC-06, September 29, 2000, https://www.csm.ca.gov/decisions/98tc06sod.pdf (accessed on September 25, 2020), page 9.

[185] *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.

[186] Black's Law Dictionary (11th ed. 2019).

compelling compliance with the law through the criminal legal process of charging the crime, proving the elements, and obtaining a conviction. The definition may also apply to the elimination of a crime if the entire crime has not been eliminated, but rather the crime has been eliminated for a certain group of individuals. Under those circumstances, the government enforces the criminal law that now contains a new mental state element by compelling compliance with the law through a process that allows individuals who were convicted without proof of their mental state to apply the new law to their prior convictions. In this way, the law is enforced retroactively to undo the convictions that would not have been currently possible. Thus the petition and hearing process set forth in Penal Code section 1170.95 is directly related to the enforcement of the crime of murder as defined under the amendments of Penal Code sections 188 and 189.

Accordingly, the Commission finds that Penal Code section 1170.95, as added by the test claim statute, eliminates a crime within the meaning of Government Code section 17556(g) and therefore, the Commission cannot find costs mandated by the state.

V. Conclusion

Based on the foregoing analysis, the Commission denies this Test Claim and finds that the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 9, 2020, I served the:

- **Decision adopted December 4, 2020**

  Accomplice Liability for Felony Murder, 19-TC-02
  Penal Code Sections 188, 189, and 1170.95 as added or amended by
  Statutes 2018, Chapter 1015 (SB 1437)
  County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 December 9, 2020 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/23/20

Claim Number: 19-TC-02

Matter: Accomplice Liability for Felony Murder

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 , MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Arlene Barrera, Auditor-Controller, *County of Los Angeles*
Claimant Contact
Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-8301
abarrera@auditor.lacounty.gov

Allan Burdick,
7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916)595-2646
Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Gwendolyn Carlos, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinncrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Charles Denton, Assistant Public Defender, *Alameda County Public Defender*
Law & Motions Division, 1401 Lakeside Drive, 4th Floor, Oakland, CA 94612-4305
Phone: (510) 272-6641
chuck.denton@acgov.org

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Juliana Gmur, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
juliana.gmur@csm.ca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Jason Jennings, Director, *Maximus Consulting*
Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (804) 323-3535
SB90@maximus.com

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, *City of Newport Beach*
Revenue Division, 100 Civic Center Drive , Newport Beach, CA 90266
Phone: (949) 644-3199
jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Kim-Anh Le, Deputy Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 599-1104
kle@smcgov.org

Fernando Lemus, *County of Los Angeles*
Claimant Representative
Auditor-Controller's Office, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-0324
flemus@auditor.lacounty.gov

Erika Li, Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Debra Morton, Manager, Local Reimbursements Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-0256
DMorton@sco.ca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Heather Parrish-Salinas, Office Coordinator, *County of Solano*
Registrar of Voters, 675 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
HYParrishSalinas@SolanoCounty.com

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Theresa Schweitzer, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3140
tschweitzer@newportbeachca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Christina Snider, Senior Deputy County Counsel, *County of San Diego*
1600 Pacific Highway, Room 355, San Diego, CA 92101
Phone: (619) 531-6229
Christina.Snider@sdcounty.ca.gov

Jim Spano, Chief, Division of Audits, *State Controller's Office*
3301 C Street, Suite 715A, Sacramento, CA 95816
Phone: (916) 324-1696
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Tracy Sullivan, Legislative Analyst, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
tsullivan@counties.org

Brittany Thompson, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Brittany.Thompson@dof.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

CALIFORNIA

SEX OFFENDER MANAGEMENT BOARD

Decrease victimization

Increase community safety

Recommendations Report

January 2010

California Sex Offender Management Board

Recommendations

January 2010

Tools such as GPS and parole supervision can fall tragically short when jurisdictions don't work together to develop comprehensive strategies to share information and communicate about supervision practices. This tragic case [Jaycee Dugard] highlights the need for systemic changes that will promote collaboration between agencies and the community at large.

Community safety depends on what we see, what we know and how we talk to each other.

USA Today
September 3, 2009

Table of Contents

California Sex Offender Management Board Members

Attorney General
Janet Neeley, Deputy Attorney General
Office of the Attorney General

California Department of Corrections and Rehabilitation (CDCR)
Scott Kernan, Undersecretary-Operations
California Department of Corrections and Rehabilitation (CDCR)

Robert Ambroselli, Acting Director
Division of Adult Parole Operations
California Department of Corrections and Rehabilitation (CDCR)

Judicial Council
The Honorable Peter Espinoza

Department of Mental Health
Temporary Representative: James Rostron
Sex Offender Commitment Program
California Department of Mental Health

Appointed by the Governor
Sophia McBeth-Childs, Detective
Sacramento County Sheriff (Investigative)

Diane Webb, Detective III
Los Angeles Police Department (Registration)

Jerry Powers, Chief Probation Officer
Stanislaus County

Michael D. Johnson, County Administrator
Solano County

Suzanne Brown-McBride, Executive Director
California Coalition Against Sexual Assault (CALCASA)

Catherine Duggan, Director
Crime Victims' Assistance Program - Ventura County District Attorney's Office

Appointed by the Senate Committee on Rules
Nancy O'Malley, Chief Assistant District Attorney
Alameda County

Tom Tobin Ph D. (Psychologist)
California Coalition on Sexual Offending (CCOSO)

Gerry Blasingame, MA, Licensed Marriage and Family Therapist
California Coalition on Sexual Offending (CCOSO)

Appointed by the Speaker of Assembly
Angela Thompson, Probation Officer
Los Angeles County Probation

Pamela King, Public Defender
Criminal Defense Attorneys

City Manager (Appointment not yet made)

Key Recommendations

The California Sex Offender Management Board (CASOMB) was created to provide the Governor and the State Legislature as well as relevant state and local agencies with an assessment of current sex offender management practices and recommended areas of improvement.

The work of the CASOMB has been divided into several significant committee focus areas. Provided below are the key summary recommendations of each committee. More substantive discussion, data and additional recommendations are located in the body of the report itself.

Re-entry, Supervision and Housing

- In order to mitigate the potential public safety risk of increased offender transience, California should target the use of residence restrictions utilizing a hybrid model of restrictions similar to a 2009 Iowa law:
  - *Residence* restrictions should apply to the most serious offenders (SVP, repeat sex offenders, and offenders convicted of violent sex offenses) who have committed an offense against a child.
  - *Loitering* restrictions should apply to designated Penal Code Section 290 registrants in places where children congregate (child safe zones)

- California cities and counties should not pass sex offender residence restriction ordinances that are in conflict with or exceed state law.

- GPS monitoring should only be utilized in conjunction with some form of community supervision, with the understanding that some high-risk offenders may need to be subject to extended supervision (including lifetime supervision for exceptionally high-risk offenders).

Victim Services

- Funding for victim service programs should be sufficient and stable so as not to erode the protection of victim rights and access to services.

- Multidisciplinary teams should be institutionalized at the state policy level.

Investigation, Prosecution, Disposition

- Communities should employ *best practices* that consider the Victim/Survivor's health and well-being in addition to maximizing evidence gathering, successful prosecution and holding sex offenders legally accountable. These *best practices* include: Sexual Assault Response Teams (SART), Child Assault Centers (CAC), Multi-Discipline Interview Teams (MDIT) and Family Justice Centers.

- Law Enforcement and Prosecution should employ *best practice*s designed to increase the effectiveness of responding to, investigating and prosecuting sexual assault cases. These *best practices* include: Specialized Sexual Assault Investigative Units and Specialized Sexual Assault Prosecution Units.

Treatment

- To ensure effective treatment, CASOMB should be provided resources to develop written policies and standards which should be implemented at the State level for programming for sexual offenders. Separate standards are needed for adult, developmentally disabled and juvenile sex offenders.

- Risk level-appropriate and evidence-based sex offender specific treatment should be routinely required for all adult and juvenile sex offenders under supervision in California.

Registration and Notification

- California should concentrate state resources on more closely monitoring high-and-moderate risk sex offenders. A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet; other factors that should determine duration of registration and Internet posting include whether the sex offense was violent, was against a child, involved sexual or violent recidivism, and whether the person was civilly committed as a sexually violent predator.

- Law enforcement should allocate resources to enforce registration law, actively pursue violations, maximize resources and results by devoting more attention to higher-risk offenders.

Special Populations

- California should investigate methods of increasing available treatment hours and participation rates for Penal Code Section 290 registrants who are committed or detained as inpatients within the Department of Mental Health.

- California should identify a more efficient method of determining when a parole violation is related to reoffense risk and appropriately triggers a clinical re-evaluation versus parole violations not related to risk that should not require an additional evaluation for parolees who have been previously evaluated and rejected for the Sexually Violent Predator Program.

Introduction

Policymakers and public safety professionals bear an incredible weight of responsibility to promote the safety of California's communities. The decisions that they make related to either the management of specific offenders or through broader public safety policies can have sweeping implications that profoundly impact real lives.

Vision
The vision of the CASOMB is to decrease sexual victimization and increase community safety.

Mission
This vision will be accomplished by addressing issues, concerns, and problems related to community management of adult sexual offenders by identifying and developing recommendations to improve policies and practices.

In 2006, Governor Schwarzenegger signed AB 1015, which created the California Sex Offender Management Board (CASOMB). The board was created to provide the Governor, the State Legislature and relevant state and local agencies with an assessment of current sex offender management practices and recommended areas of improvement.

The board is comprised of individuals who serve across the public safety sector and who volunteer their time and expertise in the service of CASOMB's vision and mission. Appointed by both the executive and legislative branch, or identified as representatives from designated agencies, board members bring a varied set of skills and professional experiences and hail from jurisdictions as diverse as the state of California itself.

The CASOMB takes seriously its role to provide informed advice to state and local leaders. Over the last three years, the CASOMB has

- held monthly public meetings;
- held a series of public hearings across California;
- provided consultation to legislators, state and local agencies and;
- developed a series of papers and reports on emerging issues in an earnest attempt to identify policies and strategies, based on the best available evidence and professional experience, that will aid in the safe and successful management of California's population of identified, adult sex offenders.

The board's mandate is ambitious and in 2008 during the CASOMB's initial assessment of California's sex offender management practices, the board observed:

> *California is an exceptional state. Its size, diversity, distribution of resources and variations in practices make any assessment of public safety strategies a complex and expansive challenge*.

The complexity of this challenge has not diminished over time. In fact, due to California's economic crisis and significant changes in state law, the challenge of quantifying, assessing and recommending policy changes that would improve sex offender management practices statewide has become both more complex and more fundamentally important.

The information regarding any one of the programs, themes, gaps and recommendations identified in this report could be significantly expanded upon. In some cases, it was impossible to attain a level of detail that would completely describe dilemmas that public safety agencies face daily because the required supporting data is simply available or reliable. Also, the structural limitations of a volunteer board operating with limited dedicated staff forced the board to leave some areas for inquiry open to future discussion and examination.

The reality in California is, rather than a coherent and coordinated sex offender management system, the state has multiple sex offender management strategies created by various legislative, voter initiative and executive branch actions with varied "mandates" and very different funding requirements and funding assurances. California's system of sex offender management was created – for the most part – piece by piece through separate and uncoordinated legislative and administrative actions. Although various components of the system have learned to work together, the overall system could not be described as coherent, cohesive and coordinated.

In many ways the CASOMB's challenge to understand, map and improve a complex, ever-changing system within the limited confines of time and resources is emblematic of the challenge that local communities and state agencies which manage sex offenders face constantly. Everyday public safety professionals at every level of government, in every community in California, continue to struggle valiantly to address what is one of the most challenging issues in community safety in an environment that is polarized, fraught with complexities and starved for even the most basic resources.

> "*Managing convicted sex offenders in the community poses extremely difficult challenges for policymakers. No other category of criminal evokes more fear and public outrage, and few communities want convicted sex offenders living in their area…. Inaccurate perceptions have made it difficult for policymakers to enact research-based policies." (Managing Convicted Sex Offenders in the Community; National Governors Association - Center for Best Practices; 2007)*

Sexual crimes rightly outrage communities. The legacy of sexual assault in the lives of victims is often profound and long-lasting. In the aftermath of an assault, communities often demand with great vehemence that policymakers and public safety professionals DO SOMETHING. The root of the desire to acknowledge the serious nature of the crime is difficult to disparage but, when combined with fear, misinformation and the heat of media inquiry, the flame of community outrage can create a political environment that rewards swift action over more methodical, effective approaches. On occasion, these

swift approaches may address short-term community outrage at the cost of directing resources and skilled personnel away from investments in strategies for long-term safety.

The CASOMB spent a significant portion of its time surveying at least some of the challenges that jurisdictions in California face when trying to effectively manage adult sex offenders, and the list is far from complete. Despite the myriad of public safety concerns associated with sex crimes, the CASOMB has concluded that the high, and still escalating, rate of homelessness among sex offenders in California is one of the most serious issues facing the field of sex offender management.

Where, and how, sex offenders should live has become the central crisis of sex offender management in California. No other emerging issue has demonstrated the same potential to fray community re-entry collaborations, complicate supervision, and undermine the offender's long-term stability. The CASOMB believes strongly that one of the most fundamental questions in public safety is not where sex offenders ***shouldn't*** live, but where ***should*** they live safely.

Despite the myriad of public safety concerns associated with sex crimes, the CASOMB has concluded that the significant increase in the rate of homelessness among sex offenders and lack of appropriate housing in California is the most serious issue facing the field of sex offender management.

The question of housing is not simply the domain of civil libertarians or those driven by humane concern. Appropriate housing, homelessness and the instability created by transience are public safety concerns.

Every child, woman and man in California deserves to be safe from sexual violence. Even though a known sex offender living near a park may seem like the most obvious threat, far more Californians will be sexually victimized in their own homes by acquaintances or family members. The lack of significant in-home intervention and prevention resources is symptomatic of an approach that fundamentally misunderstands the complete extent and nature of sexual violence. The CASOMB acknowledges this broader context of sexual victimization, and recognizes the limitations of our mandate that is focused on already identified offenders.

No two sex offenders pose the same level of risk, nor can they be managed or supervised in identical ways. Laws and policies that fail to take into account the real differences in risk that individual offenders might pose will misallocate valuable resources and misunderstand potential threats. The ultimate success of California's sex offender management system will depend on its ability to understand the myriad of ways that sexual offending occurs and then adjust to intervene and manage that risk.

Similarly, policymakers and the public should be suspicious of any one technology or strategy which promises to solve the problem of sex offenders. Sexual offending is a

complex problem that will require a thoughtful, multifaceted approach to effectively address and, ultimately, prevent.

Some of our most public and tragic sex offender management failures have demonstrated the importance of qualified, trained professionals working in concert with other disciplines to identify emergent risks. Tragedies are not averted because of a single data point or tool, they are averted because qualified professionals know how to interpret that data in context, communicate with each other and respond accordingly.

In a time of scarce resources, board members agree that approaches that can demonstrate success should take priority over those that are untested. Furthermore, policymakers should insist on ongoing evaluation of sex offender management strategies to ensure that quality is maintained and that new approaches are effective.

In light of the serious stakes, huge challenges and potentially dire consequences, it has been important to identify principles that can guide California's communities. The detailed recommendations contained in this report fall under several larger themes:

Victims and potential victims of sexual assault should inform and inspire all approaches to sex offender management. The chances of positively impacting public safety are improved when victims feel encouraged to report their experiences and are able to actively engage in the criminal legal process. The long-term health and healing of victims is aided by ensuring that victims can access supportive services and restitution.

There are still too many gaps in California's sex offender data collection. This state has one of the largest identified sex offender populations in the world yet little has been done to ensure that policymakers and public safety professionals have state-specific information that could guide their decision-making.

Three fundamental principles should inform sex offender management strategy: risk, need, responsivity.

The "risk" principle says that the greatest resources and efforts should be directed toward those individuals with the highest risk of reoffending. Changes in California's risk assessment practices have gone a long way to improving the quality and accuracy of offender assessment. Similarly, important statewide efforts such as the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) review committee continue to help California conform to evidence-based practices.

The “need” principle says that the focus of intervention should be on those characteristics of offenders that are shown to be associated with the propensity to reoffend and that have the potential to be changed through targeted interventions.

Finally, the “responsivity” principle states that interventions must be delivered in ways that best match the learning capacities of the offenders. These principles apply primarily to correctional programming but can also be used to guide various other community safety endeavors.

Therefore, in addition to “risk,” successful sex offender management approaches must include an assessment of offender “needs” and the identification of strategies that can maximize an offender’s “responsivity” to behavior change. Essential to this process is the use of sex offender treatment professionals. There is an extensive body of evidence and research that document the positive public safety impact of sex offender treatment, particularly when coupled with supervision and management strategies.

Coordinated responses will always be more effective than the work of a single agency or supervisor. Effectively understanding offender risk and implementing effective community management strategies require a host of skills and resources.

For the management of individual offenders, coordinated efforts such as the “Containment Model” and Sexual Assault Felony Enforcement (SAFE) teams emphasize the success of collaborative information sharing, enforcement, treatment, and supervision activities.

Local and statewide systems can benefit from coordinated teams such as sex offender management councils to promote interagency communication and policy improvement. Efforts like those in San Diego and San Francisco County have had lasting and important impacts on community response and could provide similar benefits if implemented elsewhere.

Management activities are only as good as the skills of those who are tasked with performing them. The complexity of both the nature of sexual offending and interventions require a specialized body of knowledge and skills. Investments in skilled personnel who perform investigation, adjudication, disposition, supervision, treatment and monitoring activities will enhance the overall capacity of the system to appropriately manage offenders.

Effective re-entry is an important first step. The period of time immediately after an offender’s release from prison or jail is an important indicator of that offender’s ultimate success in the community. Maximizing effective supervision and supportive resources (such as housing, treatment, and appropriate employment) during this time can maximize the potential for some offenders to refrain from reoffending.

We are all members of a community safety team. The public will also have to examine its relationship with and understanding of sex offender management practices.

Community education is key. Policies that reduce the risk of reoffending by managing sex offenders must have a goal that promotes the success of sex offenders. Successful re-entry includes a life without re-offending.

Public education efforts that dispel misunderstanding and promote information sharing can enhance the capacity of a community to manage identified offenders, as well as assist in a response to new incidents and ultimately prevent future victimization. Similarly, community-based efforts such as Circles of Support and Accountability (COSA) focus on ways that a community can support offenders to remain offense-free.

With these principles in mind, the CASOMB has organized its work into a number of areas of inquiry:

Victim Services
Investigation, Prosecution and Disposition
Treatment
Re-entry, Supervision and Housing
Registration and Notification

The following sections of this report provide a more extensive examination of California's current status in each of these focus areas and offer important recommendations about future directions.

Research Gaps

As the CASOMB has begun to move forward in its attempts to bring coherence to and maximize the effectiveness of California's efforts to manage the state's sex offenders, it has become increasingly clear that important information tools to understand and improve the extremely complex system are lacking.

One of CASOMB's grounding principles is that sex offender management strategies should be based on reliable information and on the findings of solid research regarding the effectiveness of various approaches. Such an evidence-based perspective cannot make the desired progress if the evidence that is sought is too difficult to obtain or is simply not available.

The CASOMB invested considerable effort into developing a "Dashboard" to track and report key data on California sex offender management topics. It has proved very difficult to obtain and maintain the data needed to keep this reporting system updated.

The CASOMB believes that one foundational task is to determine the effectiveness and cost effectiveness of any effort undertaken to manage sex offenders. The availability of key data is crucial to answering questions about the effectiveness – and, subsequently, the cost effectiveness - of various management approaches.

It is anticipated that the revision of the Department of Justice systems for maintaining the Megan's Law website – an effort now underway – will eventually be of help in making a wider array of important information about registered sex offenders available to researchers.

Following is an enumeration of some areas where the CASOMB believes that the availability of accurate information would support better policy decision making. This list is not intended to be exhaustive. The order and numbering in the following list are not intended to reflect order of importance.

1. California needs to make a determination of the number of convicted sex offenders being handled at the county level, particularly the number on county probation but also the number serving post-conviction time in county jails.

2. California should conduct an analysis of the true recidivism rate (arrest or conviction) for sex offenders released from custody after serving a sentence in a CDCR prison. Such an analysis could look at recidivism over three-year, five-year and ten-year periods. To be meaningful, it would need to account for actual time at risk in the community and not include time when the individual had been returned to custody and so was not actually at risk to re-offend – a method of analysis not readily accomplished with data currently available. The presence or absence of certain management practices should be noted as well, including supervision, Containment, treatment, GPS tracking and others.

3. A similar analysis is needed for the recidivism of sex offenders sentenced to county probation.

4. Since the state is expending substantial resources on GPS for sex offenders, a large scale outcome evaluation and cost effectiveness analysis of GPS should be conducted. Such a study should include both CDCR and county probation and should take into account the risk level of the sex offenders included in the study.

5. The assumption that residence restrictions actually contribute to public safety should be evaluated. It seems clear that residence restrictions are driving up the numbers of homeless sex offenders and so the recidivism of transient versus those who have stable housing should be compared. Research strategies should be developed to answer the challenging question of whether residence restrictions actually increase public safety.

6. California should develop an accurate analysis of the projected total costs for GPS tracking if lifetime supervision were implemented.

7. If California were to come into compliance with the federal Adam Walsh Act there would be substantial implementation costs. Although estimates have been generated with regard to some of the AWA requirements, an accurate forecast should be developed to clarify the actual anticipated costs for all aspects of the new AWA requirements.

8. Under changes required by Proposition 83, increasing numbers of individuals now must be screened and evaluated to determine whether they meet the criteria for civil commitment as a "sexually violent predator." These evaluations are very costly. Some careful analysis is needed to determine whether the benefits of such an extensive use of full SVP evaluations are justified by their benefit to community safety or whether there are other, less costly ways to preliminarily screen and determine whether a particular candidate is likely to meet the criteria for commitment.

9. There is a need to determine the full costs for requiring lifetime registration and notification for all PC290 registrants. Elsewhere in this report it is recommended that California revise its requirements for lifetime registration. A better knowledge of the full cost to the state and to local jurisdictions for maintaining and enforcing the lifetime requirement for all sex offenders, no matter what their risk level or how long they have lived crime free would further clarify the best future direction for California registration requirements.

10. Proposition 83 empowered cities and counties to enact their own residence restrictions for sex offenders. Not only is there no provision for keeping track of the proliferation of these regulations, but their impact is unknown. Research is needed to determine the impact of local ordinances on the housing of sex offenders, their degree of transience and their movement across jurisdictional boundaries as a result of such restrictions.

11. California should gather data tracking of the flow of sex offender cases from initial police report to arrest to conviction to disposition (including length of stay in prison) to supervision period to the post-supervision period. Such data would give a much clearer picture of how the larger system works and what impact various changes, such as longer sentences, have had. It would, for example, help planners determine whether the 25-years-to-life sentences are going to stem the flow into the civil commitment program.

12. Information should be gathered regarding how many sex offenders enter treatment programs and how many never do and whether that makes a difference in recidivism - inasmuch as research seems to suggest it may be the only intervention that does. Such research should also include information about the nature, length and quality of treatment programs.

Acknowledgements

The CASOMB owes a debt of gratitude to the victim / survivors of sexual violence who shared their experiences and provided guidance to the board. We are also grateful to victim-serving organizations such as California Crime Victims Assistance Association, California Consortium of Multidisciplinary Centers and Teams and the California Coalition Against Sexual Assault for supporting the development of this report and recommendations.

The CASOMB is thankful for the ongoing support of the California Department of Corrections and Rehabilitation for our work. In particular, the support of Secretary Cate, the Division of Adult Parole Operations, and Victim Services.

This report was also informed by many community members who provided comment at public meetings and hearings as well as professionals who agreed to be expert consultants to the of various CASOMB subcommittees.

Several local and statewide public safety efforts over the last five years have helped inform and frame our work. These include the sex offender management teams in San Diego and San Francisco, Governor Schwarzenegger's 2006 High Risk Sex Offender Task Force, and the California Sex Offender Management Task Force facilitated by the Center for Sex Offender Management.

Victim Services

Effects of Sexual Assault and Victim Assistance

Sexual assaults are exceptionally threatening traumatic events outside the range of usual human experience. While some victims exhibit a greater ability to adapt and a higher resiliency, generally, victims of sexual offenses are markedly distressed. Whether the effects of sexual offenses are easily visible or not, the stress reaction is generally understood to be a shattered worldview, which leads to profound feelings of

VICTIM SERVICES RECOMMENDATIONS:

- **Funding for victim service programs should be sufficient and stable so as not to erode victim rights, services, and ability to participate in offender management systems.**
- **There should be a restitution specialist position that ensures direct victim restitution orders are obtained from the court in a determined amount.**
- **Multidisciplinary teams should be institutionalized at the state policy level.**
- **Agencies that work with and represent people with disabilities should be a part of and participate routinely in multidisciplinary teams. Policies and procedures should be in place to ensure the ability to respond sensitively and effectively to victims with disabilities.**

distrust. A sexual offense shatters the victim's assumptions about the world because the world is experienced—that is, after the offense—as unsafe and unjust, which causes a sense of isolation and estrangement from others. Victims may suffer psychological reactions including a disassociation and an intense fear for their lives. When the offense is perpetrated by an acquaintance, friend or lover, violation of trust can be a life-altering issue for the victim. A victim may lose his or her sense of community and belonging as a result of intense feelings of guilt and devaluation. The traumatic effects of sexual assaults involving child victims can have a lasting impact on the child's physical and mental health, overwhelming the child's coping and ego defense mechanisms and threatening the child's physical integrity. Beyond the immediate consequences of a sexual assault, the residual effects present problem behaviors in adolescence and adulthood. Childhood victimization is a significant predictor of adult arrests for alcohol and/or drug-related offenses.[1] Childhood victimization has been found to be a statistically significant predictor of having at least

[1] National Institute of Justice, U.S. Department of Justice, *Childhood Victimization and Risk for Alcohol and Drug Arrests,* November 1995.

one alcohol-or drug-related arrest in adulthood. The indirect path between childhood victimization and adult substance abuse arrest is well demonstrated. Child victims of sexual offenses are more likely to have an arrest as a juvenile, and those arrested as juveniles are at greater risk for arrests for alcohol or drug offenses as adults. Child victims of sexual assault—female victims, especially—are more likely to be arrested for property, alcohol, drug, and such misdemeanor offenses as disorderly conduct and curfew violations.[2] The significance of the offense profoundly harms the child's parents as well. Once the offense is discovered, it is common for the child's parents to experience a deep sense of guilt and failure—which provides but a single glimpse of the impact on wider society.

The significance and scope of sexual assault is an important criminal justice issue. The lasting impact of sexual assault and the rights of the victims should be a central concern to the management of adult sex offenders.

VICTIMS' CONSTITUTIONAL AND STATUTORY RIGHTS

At the November 2008 General Election, the people of the state of California adopted by initiative Proposition 9, which became known as the Victims' Bill of Rights Act of 2008: Marsy's Law. The Act of 2008 amends Article 1, section 28 of the California Constitution.

While the rights enumerated in the Victims' Bill of Rights Act of 2008 generally existed in California statute, the passage of Proposition 9 makes the rights part of the constitution.

There are special rights for victims of sexual assault in the California Penal Code, Evidence Code, and Health and Safety Code. For a list of constitutional and statutory rights, please see **Appendix A and Appendix B**.

VICTIM NOTIFICATION

The right to participate in the process of justice is important to victims of crime. However, victims cannot participate unless they are informed of their rights and of the time and place of the relevant proceeding that they may exercise those rights. Without notification, victims of sexual assault are also denied the ability to take precautions for their safety. Therefore, the most fundamental right of a victim is the right to be kept informed. Notifying victims in advance of a proceeding and informing them of their rights to participate in that process are prerequisites to the exercise of the victim's rights. Keeping the victim informed should be an important part of the mission of local and state law enforcement agencies, prosecuting agencies and correctional agencies. It should be reflected in the agency's internal policies and procedures, as well as in the attitudes of agency personnel.

---

[2] National Institute of Justice, *An Update on the "Cycle of Violence",* February 2001.

VICTIM RESTITUTION

Restitution is an important part of an offender's sentence. It is effectively a rehabilitative penalty in that it increases accountability by holding the offender financially responsible for the crime and compensating the victim for the costs caused by the offender's actions. In every case where the sexual offender is convicted, the court imposes a restitution fine. The court may determine the amount of the fine as the product of $200 multiplied by the number of years of imprisonment the offender is ordered to serve, multiplied by the number of felony counts of which the offender is convicted. Misdemeanor offenses are assessed at a minimum of $100. The offender's inability to pay is not to be considered a compelling reason not to impose a restitution fine. Inability to pay is considered only in increasing the amount of the restitution fine in excess of the minimum fine.

Wherever the victim has suffered economic loss as a result of the offender's conduct, the court requires the offender make restitution to the victim in an amount established by court order, based on the amount of loss claimed by the victim. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order includes a provision that the amount shall be determined at the direction of the court.

Since a sexual offender's probation may not be revoked for failure to pay restitution unless the offender willfully failed to pay and had the ability to pay, many sexual offenders reach the end of their probation terms without making full restitution.

In March 2006, the California Department of Corrections and Rehabilitation, Office of Victim and Survivor Services published the results of a study relating to adult inmate restitution.[3] The study included men and women at state prisons and camps, but did not include community correctional facilities or parolees. The most striking finding included was that only 11 percent of all offenders had direct restitution orders. Of those offenders with direct restitution orders only 19 percent of the victims had requested collection. The study concluded, . . . ***victims' constitutional right to receive restitution from their offenders continues not to be honored or enforced in California at this time.***

Since January 2007, the California State Department of Corrections and Rehabilitation automatically collects from offenders in all victim restitution cases whether or not the victim has ever contacted the department, and in preference to restitution fine collections. This has dramatically increased victim restitution collections, but has also challenged county authorities to provide victim recipients' contact information to the department. Two out of every three cases come to the department without sufficient information to disburse victims' restitution collections.

---

[3] California Department of Corrections and Rehabilitation, Office of Victim and Survivor Services, *Prison Restitution Project, 2004 Survey,* March 2006.

In January 2009, the California Department of Corrections and Rehabilitation was given legislative authority to use the California Franchise Tax Board (FTB) to collect unpaid victim restitution from all offenders who have been under the department's jurisdiction.

It will be necessary to coordinate between agencies, including the Victims Compensation and Government Claims Board to improve restitution collection systems.

VICTIM COMPENSATION FOR ECONOMIC LOSSES

California's Victim Compensation Program is the largest in the nation. The program provides compensation for victims of crimes who are injured or threatened with injury. Eligible family members or other specified persons may also be eligible for compensation under the program. The program pays for services such as medical and dental care, mental health services, lost wages or support, funeral or burial expenses, and emergency relocation. Crime can leave victims and their families with bills for medical, mental health counseling, funeral services, lost wages and with the financial costs associated with a number of other consequences of the crime. The compensation program, which is a claims-based program, supports direct payments to victims and providers for crime-related expenses. However, the program exists to provide help to the victim and family members after all other reimbursement sources have been utilized. In other words, the program is the payer of last resort. Victims are reimbursed only after other available sources have been exhausted.

As part of its 2008 Budget Analysis, the Legislative Analyst's Office estimated the Victim Compensation Program will become insolvent in approximately 2012-13, when it would run a deficit of nearly $35 million. The Office described the likelihood that expenditures will grow faster than the relatively stable revenues flowing into the fund. The increased expenditures are due to (1) increased awareness of the service provided by the program; (2) various changes in the program's compensation of service providers, and (3); the increased use of the fund in recent years to support other new state programs.

The California Bureau of State Audits presented its audit report concerning the Victim Compensation Program Dec. 9, 2008. The audit report was requested by the Joint Legislative Audit Committee. The report concludes that program compensation payments sustained a 50 percent decrease from fiscal years 2001-02 through 2004-05 as a result of attempts to maintain the fiscal viability of the Restitution Fund. Compensation payments have increased since fiscal year 2004-05, but not to the level they reached in fiscal year 2001-02. Despite the significant decline in payments, the costs incurred to support the program increased. These costs—ranging from 26 percent to 42 percent annually—account for a significant portion of Restitution Fund disbursements. The report went on to say the program has not established a comprehensive outreach plan to assist it in appropriately prioritizing its efforts and focusing on those in need of program services.

As a recipient of Violence Against Women Act funds, California is required to provide medical treatment for sexual assault crimes at no charge to the victim. Further,

California law prescribes that a sexual assault victim cannot be billed, either directly or indirectly, for any treatment as a result of a sexual assault crime. Although case law has determined that the Compensation Program is the payer of last resort, unique to sexual assault is the prohibition of billing a victim, either directly or indirectly, including that victim's insurance. Therefore, in compliance with both federal and state law, the victim of sexual assault shall never be financially responsible paying for treatment arising out of his or her sexual assault victimization.

JUSTICE-BASED AND NON-GOVERNMENTAL VICTIM SERVICES

Formal help sources for victims of sexual assault include justice-based and non-governmental victim service programs, as well as other helping agencies that serve victims as part of their larger mission (e.g., healthcare and mental healthcare facilities). The provision and funding of direct victim services is spread across several state departments and agencies that have little interaction. These include four Cabinet-level agencies, the Governor's office, two other constitutional offices and at least 11 state departments.[4] The major sources of funding for victim services include the Victim Compensation and Government Claims Board[5] and the California Emergency Management Agency (CalEMA)[6]. In addition to these entities, other departments play a role in the provision of victim services, including the Attorney General's Office, the Department of Corrections and Rehabilitation, the Department of Social Services and the Department of Mental Health. The lack of a single lead agency at the state level results in limited collaboration, duplication of services, ineffective partnerships and the absence of a statewide strategic approach to funding decisions. Without a statewide strategic approach to funding decisions, or a systematic method for communication and collaboration among the many public and private providers who serve crime victims, collaboration on crosscutting victims' issues is the exception. The collaboration that does take place is generally ad hoc, haphazard and depends on individual personalities and preferences.[7]

Primary among the professional service providers for sexual assault victims are the Victim/Witness Assistance Programs, Rape Crisis Centers and Child Advocacy Centers.

MULTIDISCIPLINARY TEAMS/CHILD ADVOCACY CENTERS

Child Advocacy Centers (CACs) play an increasingly significant role in the response to child sexual abuse and other child maltreatment in the United States. CACs are

---

[4] California State and Consumer Services Agency, *Strengthening Victim Services in California, A Proposal for Consolidation, Coordination, and Victim-Centered Leadership,* November 2003.

[5] information about this program can be found at http://www.boc.ca.gov/

[6] Information about this program can be found at http://www.oes.ca.gov/ under Law Enforcement and Victim Services Division

[7] California State and Consumer Services Agency, 2003

designed to reduce the stress on child abuse victims and families created by traditional child abuse investigation and prosecution procedures and to improve the effectiveness of the response. Before the advent of CACs, child victims were subjected to multiple, redundant interviews about their abuse by different agencies, and were questioned by professionals who had no knowledge of children's developmental limitations or experience working with children. Child interviews took place in settings such as police stations that would further stress already frightened children. The multiple agencies involved did not coordinate their investigations, and children's need for services could be neglected.

CACs coordinate multidisciplinary investigation teams in a centralized, child-friendly setting; employ forensic interviewers specially trained to work with children; and assist child victims and families in accessing medical, therapeutic, and advocacy services.

Despite the widespread growth and importance of CACs, however, the model had not been rigorously evaluated until until 2001 when the Office of Justice Programs funded a multi-site evaluation of CAC's. The study was conducted by the Crimes Against Children Research Center at the University of New Hampshire in conjunction with research teams at each of the CACs participating in the study. Researchers enrolled cases in the study between December 2001 and December 2002. Data collection continued through December 2004. Data from more than 1,000 cases of sexual abuse were collected from four CACs and from communities without CACs.[8] What follows is an overview of the effects that CACs have had on child abuse investigations.

- 81 percent of investigations in CACs were joint police and child protective services investigations compared with 52 percent in communities without a CAC.
- 28 percent of CAC cases used team interviewing compared with 6 percent in non-CAC communities.
- 55 percent of CAC interviews involved police compared with 43 percent of non-CAC community interviews.
- 56 percent of CAC cases had multidisciplinary case review, compared with 7 percent in non-CAC communities.
- 83 percent of CACs held interviews in center facilities designed for interviewing children, while 75 percent of interviews in non-CAC communities were conducted in child protective agencies, schools, police stations or children's homes.
- 85 percent of cases in CACs and non-CAC communities involved only one child forensic interview.

---

[8] Project Researchers: *University of New Hampshire:* Theodore P. Cross, Lisa M. Jones, Wendy A. Walsh, Monique Simone; *Lowcountry Children's Center:* Arthur Cryns, Polly Sosnowski; *Dallas Children's Advocacy Center:* Tonya Lippert-Luikart, Karen Davison; *National Children's Advocacy Center:* Amy Shadoin, Suzanne Magnuson; *Pittsburgh Children's Advocacy Center:* David Kolko, Joyce Szczepanski.

- Over 70 percent of children disclosed at forensic interviews in both CACs and non-CAC communities, with statistically significant difference between the two.
- 48 percent of children in CAC cases received a forensic medical exam, compared with 21 percent in non-CAC communities.

VICTIM SERVICE PROVIDERS AND SEX OFFENDER MANAGEMENT

Victim service providers work directly with crime victims and come into contact with them on a daily basis. Victim service providers are eminently qualified to assist in managing sex offenders from a victim-focused perspective, due to their history of working with and on behalf of sexual assault victims. Their knowledge of the needs of victims can enhance sex offender management policy development, professional training initiatives, day-to-day practices, and community notification and education efforts. In addition, victim service providers offer services to victims to respond to issues that may arise when their perpetrators are released on probation or parole. Involving victim service providers also assures that community and governmental bodies are responsive to victims' needs and establish policies that condemn and prevent sexual offenses. If offenders disclose crimes with new victims during supervision or treatment, victim service providers can work with supervision agencies and treatment providers to consider ways to offer assistance to these victims. Victim service providers can help victims achieve their personal goals with the criminal justice system, instead of goals defined by prosecutors, judges, probation and parole officers, and sex offender treatment providers.

Traditionally, the involvement of victim service providers has tapered off after sentencing. However, victim safety and well-being must continue to be a priority when convicted offenders are released on probation or parole. Although the concept of involving victim service providers in sex offender management is emerging, the Center for Sex Offender Management, a project of the Office of Justice Programs, U.S. Department of Justice, suggests that victim service providers can assist victims in the following ways once a sex offender is released on probation or parole: [9]

- Explaining the community supervision and treatment program to victims;
- making sure victims are informed of changes in offenders' status and conditions of supervision;
- helping victims develop a safety plan;
- facilitating victim input regarding supervision and treatment plans;
- ensuring that treatment providers view their responsibility to the victim as equal to their responsibility to the offender with who they are working and;
- participating in case review meetings and sharing information that promotes informed case decisions that promote victim protection.

---

[9] For a detailed discussion of the victim-centered approach to sex offender management please see: a publication produced by the Center for Sex Offender Management entitled: *Engaging Advocates and Other Victims Service Providers in the Community Management of Sex Offenders* www.csom.org

Furthermore, the Center promotes a more comprehensive victim-centered approach including:

- Educating stakeholders about the benefits of a victim-centered approach;
- identifying promising practices;
- encouraging victim service providers to take a leadership role in advocating for the needs of victims of sex offenders supervised in the community and new victims identified in the process of sex offender management;
- encouraging multi-disciplinary training among supervision agencies, sex offender treatment programs and victim service providers;
- helping agencies build their capacity to collaborate and;
- supporting the establishment of sex offender supervision units that include a role for victim service providers.

Investigation, Prosecution and Disposition

Sexual assault crimes against children, teens and adults are considered some of the most heinous crimes with the potential for lifelong impact on the victims of sexual assault crimes. More than any physical injuries a victim sustains, the violation of trust that accompanies most sexual assault has been shown to dramatically increase the level of trauma the victim suffers. Emotional and psychological injuries cause harm that can last much longer than physical wounds.[10] Without effective investigation, prosecution and disposition, no other elements of sex offender management would be possible.

INVESTIGATION, PROSECUTION AND DISPOSITION RECOMMENDATIONS:

- Communities should employ *best practices* that consider the victim/survivor's health and well-being in addition to maximizing evidence gathering, including utilization of Sexual Assault Response Teams (SART), Child Assault Centers (CAC), Multidisciplinary Interview Teams (MDIT) and Family Justice Centers.
- All law enforcement officers who are tasked with investigating sexual assault crimes should complete a state certified course for the training of specialists in the investigation of adult sexual assault cases, child sexual exploitation cases, and child sexual assault cases.[11]
- Law enforcement should adopt guidelines and procedures for the investigation of sexual assault cases and cases involving the sexual exploitation or sexual abuse of children, including police response to and treatment of victims of these crimes.[12]
- Law enforcement should employ the *best practice* of specialized Sexual Assault Investigative units.[13]
- Prosecutor Offices should employ the *best practice* of Vertical Prosecution Units and Vertical Prosecutors utilizing true Vertical prosecution.
- The Center for Judicial Education and Research (CJER) should employ the *best practice* of Judicial Education and Training.

---

[10] For a longer discussion of the effects of sexual violence, please see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 35-37 (available at casomb.org) also see the 2007 California Sex Offender Management Task Force Report (available at casomb.org)

[11] For suggested training content please see **APPENDIX D**

[12] For suggested guideline elements please see **APPENDIX E**

[13] For a longer discussion see 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 88 (available at casomb.org)

- Prosecutor Offices should employ the *best practice* of adopting established guidelines that ensure consistency and integrity in filing decisions and, wherever possible, designate on experienced sexual assault prosecutor to make filing decisions.[14]
- Prosecutor Offices should employ the *best practice* of establishing case review and filing guidelines that ensure consistency in plea bargains and dispositions.[15]
- All Prosecutor Offices should adopt California District Attorneys Association (CDAA) Filing Standards, updated and published annually.
- All Prosecutors who are conducting sentencing negotiations and dispositions of sexual assault crimes should attend the CDAA Charging and Sentencing Training Seminar within six months of the assignment or as soon as practical.
- Prosecutor Offices should utilize the *best practice* of the Sexual Assault Mentor DA Program.[16]
- The Legislature may explore a promising practice of enacting statutes that allow sufficient judicial sentencing discretion in individual cases.
- Recognition should always be given to the reality that that sex offenders are a heterogeneous population with different risk profiles and treatment needs.
- Allow sentences, where appropriate, to be commensurate with the level of risk posed by the offender as well as the severity of the offense.
- Ensure that Victim impact statements and restitution requirements be included in the sentencing process, as these statements provide insight regarding the impact of the crime on the individual victim and community at large.
- The Legislature and Courts should adopt the promising practice of sentencing practices which support sex offense-specific treatment and community supervision efforts ("Evidence based sentencing"). "Evidence based Sentencing" should include[17]:

  Following incarceration, mandates for sex offense specific treatment, sufficient periods of community supervision following incarceration that allow for monitoring, relevant special conditions or restrictions court-leveraged consequences for non-compliance with supervision requirements.

---

[14] For a longer discussion see 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 87-88 (available at casomb.org)

[15] For a longer discussion see 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 96 (available at casomb.org)

[16] For Mentor DA Program Criteria see **APPENDIX F**

[17] See the 2007 California Sex Offender Management Task Force Report 33 (available at casomb.org)

Sexual assault investigation is a complex endeavor that requires both a collaborative approach and specialized knowledge among those involved in the investigative process. The effective management of sexual assault offenses begins with a thorough and accurate investigation. The need for implementation of *best practices* and the openness to explore *promising practices* in the investigation and prosecution of sexual assault cases are paramount.

There currently exist *best practices* upon which recommendations are based and "promising practices" upon which recommendations are considered. A *best practice* is a continuum of practices/programs ranging from promising to evidence-based. Working with "promising practices" is a type of quality movement promoting the concept of "doing our best."

Sexual assault victims should always have the choice about when, with whom, and under what conditions they wish to discuss their experiences. It is clear that the victim's recovery will be enhanced if she or he feels believed, supported, protected, and if she or he receives counseling following the disclosure that she or he was assaulted. The criminal justice system exists to protect victims of crime and hold perpetrators accountable. Improvement in the effectiveness and success of the criminal justice system will enhance victims' confidence in those systems, which will result in more participation in the systems and better management of sex offenders. The manner in which the investigation is conducted, the success with which the cases are prosecuted and the respect, dignity and caring for the victim of sexual assault who participates in the criminal justice system can be key contributors to the healing and recovery of the victim. Holding sex offenders accountable for their crimes, including imposing appropriate punishment and eventual management of convicted sex offenders in our communities, will also be key in preventing future sexual assault crimes and sexual assault crime victims.

In previous reports the CASOMB has examined and detailed specific issues, gaps and recommendations related to the investigation and prosecution of sex crimes by adult offenders.[18] This report builds on that information by examining issues related to the disposition of these cases.

Towards the Development of Promising Practices in Disposition

Over the last several years, the Legislature has enacted sentencing laws that have significantly reduced the discretion of the Court in imposing post-conviction sentences. With the enactment of the "one-strike sexual assault law" (PC Sect 667.61), more indeterminate sentences are handed down. Through the enactment of the "three strikes law" (PC Sect. 1170.12), convicted sex offenders are required to serve 85% of their sentences. However, a significant number of offenders who are convicted of child sexual assault crimes are being placed on probation with conditions. The lack of a centralized database that tracks the sentences of all sex offenders inhibits the

[18] January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 85-98 (available at casomb.org)

opportunity to establish *best practices* in sentencing or to develop "evidence-based" sentencing.

"*Promising Practices*" are methods, modes of operation, actions or philosophies that *may* lead to the intended outcome but have yet to be adequately tested. Developing Promising Practices include measurable objectives. These practices are evolving and include constant improvement. Promising Practices generally reflect theories and beliefs, processes and strategies that utilize or reflect relevant evidence. A *Promising Practice* has an evaluation component/plan in place to move towards demonstration of effectiveness. However, it does not yet have evaluation data available to demonstrate positive outcomes. *Promising Practices* continually incorporate lessons learned, feedback, and analysis to lead toward improvement of identified positive outcomes. A *Promising Practice* must depend on the collection of validated data in order to move forward.

While much attention is placed on "evidence-based sentencing," it remains a *Promising Practice* until the process of testing and identifying the intended outcomes can occur and be reported as successful. Therefore, it is important to create a validated data collection mode for evaluating crimes, convictions, sentencing and successful outcomes of lack of re-offending, protection of the community from future sexual assault crimes and protection of the victim from further victimization.

To begin the process of establishing and evaluating a "*Promising Practice*" the Legislature should create policy based on the recognition that sex offenders are a heterogeneous population with different risk profiles and treatment needs.[19] The Courts, as part of the evaluation of a promising practice, should impose sentences - to the extent possible - that are commensurate with the level of risk posed by the offender, the severity of the offense, and the capacity of the criminal justice system to effectively manage each offender. As the evaluation of a "*promising practice*" often involves the review of the impact on the victim, sentencing should ensure that Victim Impact Statements and restitution requirements are considered in the sentencing process, as these statements provide insight regarding the impact of the crime on the individual victim and community at large.

The Legislature and Courts should explore the "*promising practice*" of adopting sentencing practices which support sex offense-specific treatment and community supervision efforts ("Evidence based sentencing") following incarceration. "Evidence based sentencing" should include mandates for sex offense specific treatment, sufficient periods of community supervision that allow for monitoring, relevant special conditions or restrictions, and court-leveraged consequences for non-compliance with supervision requirements.

There is no question that effective sentencing, establishing and evaluating "promising practices" with the goal of identifying a *best practice* requires Judges who are engaged in the process. The Judicial Council, the Administrative Office of the Courts and the

---

[19] 2007 California Sex Offender Management Task Force Report (available at casomb.org) 37

Courts should employ the *best practice* of strongly encouraging judicial education and training in the area of sexual assault. In order to engage an informed and supportive role, it is important that judges be educated on sentencing and the monitoring practices available that enhance positive practices of sex offender management. To date, some judicial educators with expertise related to sex offender management have created some resources and training materials in the area of sexual assault case management, victimology and victim dynamic, offender management and sentencing laws in California[20]. Those materials should be broadly distributed and used by the Courts throughout California.

[20] These resources have been created by the California Judicial Council. More information can be found at: http://www.courtinfo.ca.gov/jc/

Treatment

Sex offender specific treatment is an important component of the Containment Model of sexual offender management. Collaboration between treatment providers, parole agents / probation officers, clinical polygraph examiners, and victim advocates is a key element necessary for the successful re-entry and effective supervision of sex offenders, whether they are on parole, probation or other forms of conditional release from a State Hospital or Developmental Center. Sex offender treatment has historically utilized different methods to train the individual to regulate and manage himself or herself, with victim safety and reduction of recidivism being primary treatment goals. Current research has identified that cognitive-behavioral therapy methodologies applied with consideration of the risk, needs and responsivity of participants are the most effective in reducing risk of re-offense.

TREATMENT RECOMMENDATIONS:

- Risk level-appropriate and evidence-based sex offender specific treatment should be routinely required for all adult and juvenile sex offenders under supervision in California.
    i. The Containment Model should be a mandatory policy and public safety strategy implemented by California policy makers at the State and County levels.
    ii. Funding should be allocated to implement the prison-based sex offender treatment programming that was previously approved (but left unfunded).
    iii. The current implementation of the Sexually Violent Predator (SVP) statute should be reviewed and improved.

- To ensure effective treatment, written policies should be developed that describe standards and regulations which should be implemented at the State level for treatment programming for sexual offenders. Separate standards are needed for adult sex offenders, individuals with developmental disabilities and juvenile sex offenders.
    iv. A database should be maintained to track and monitor approved treatment programs, treatment outcomes including rates of program completion and treatment drop outs, reasons for probation or parole revocations, rates of sexual and other criminal recidivism.
    v. The California Department of Mental Health should likewise collect data for Mentally Disordered Sex Offender (MDSO) and Sexually Violent Predator (SVP) programs to ensure efficacy of intervention and cost efficiency.

- To ensure effective treatment, written policies and standards should be developed which can be implemented at the State level defining minimum qualifications of education, experience and competence for sex offender specific evaluators, and treatment providers.
    i. Such credentialing should lead to listing as an approved provider to whom Courts, Probation Departments, Parole Agents, and other case managers will refer sex offenders for therapeutic services.
    ii. As some rural counties or regions do not have sufficient resources or numbers of offenders to receive community based treatment, provider credentialing exceptions should be implemented with ongoing consultation with appropriately credentialed and approved providers.

To date, there have been significant discussion and extensive recommendations regarding evidence-based *best practices* in the field of sex offender treatment and management in California.[21] Little has changed since the January, 2008, CASOMB report regarding the status of sex offender treatment in California.

CASOMB recognizes that treatment for sex offenders involves a number of general clinical competencies as well as specialized strategies that are not typically employed in traditional therapy. One example of how sex offender treatment is quite different from traditional therapies is that sex offenders are often mandated to participate and they face more limits on confidentiality. Specifically, within the Containment Model,[22] there are a number of additional parties who must know what is occurring in sex offenders' treatment processes, such as probation officers or parole agents. These specialists have mandates from Courts or Parole Boards to ensure that certain offenders are participating in treatment and are following probation or parole conditions. Another unique aspect of sex offender specific treatment within the Containment Model is the frequent use of specialized post-conviction polygraph examinations to verify the veracity of self-report information provided by the offender in treatment and in his communication with his probation officer or parole agent. The distinctive nature of sex offender therapy is also illustrated by the fact that sex offender clients do not

---

[21] January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 137-156 (available at casomb.org) and also see the 2007 California Sex Offender Management Task Force Report 49-60 (available at casomb.org) and the 2006 California High Risk Sex Offender Task Force 11 (available at casomb.org)

[22] For a discussion of the Containment Model please see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 102-104 (available at casomb.org)and 2006 California High Risk Sex Offender Task Force 15-18 (available at casomb.org)

independently determine the course and nature of their own treatment, as do clients in more traditional therapies.

Sex offender specific assessment and treatment require significant clinical skill and experience on the part of a competent therapist and require that the therapist have additional knowledge and techniques that are based in empirical evidence for their use with sex offender clientele. The ultimate goal of treatment is to motivate and enable the offender to develop the ability to self regulate his or her behavior and, by doing so, increase safety for children and other potential victims in the community.

It is difficult to provide information on the quality or quantity of the sex offender treatment that does exist within California.[23] Given that there are not yet statewide criteria or qualifications for psychotherapists who provide treatment services to sex offenders, there is not yet a standard by which to compare providers, services, or outcomes. It is not currently even possible to determine how many providers or programs exist and how many offenders are in treatment at any time.

Other than adult and juvenile prisons, developmental centers, and state hospital facilities, there are currently no locked residential placements for higher risk offenders nor are there residential facilities for sexual offenders with mental health needs (e.g., housing, moderate to intensive treatment, and physical/mental health services). Treatment approaches vary between these facilities. CDCR has recently moved forward with a design for an in-prison treatment program but at the present time funding has not materialized. Such a program, while it would be a significant step forward for California, would address only a small proportion of the approximately 22,500 sex offender inmates in CDCR prisons.

Previous CASOMB reports have noted that a few California counties have developed their own protocols and practices for Probation Department approval of those who seek to provide specialized treatment services to sex offenders; San Diego, Orange, San Luis Obispo, and San Francisco Counties developed their protocols in collaboration with and utilizing funding from the Center for Sex Offender Management (CSOM). Shasta County previously developed its Containment Model system without such funding. While these five counties may have similar expectations for treatment providers, there remain several differences in protocols between them. In short, California has 58 counties whose Probation Departments each have different protocols and practices.[24]

The Department of Mental Health has a highly-developed cognitive behavioral treatment program for men who are civilly committed as Sexually Violent Predators under WIC 6604 or are detained pending commitment proceedings under WIC 6602. The individuals committed pursuant to the SVP statute are detained at Coalinga State

---

[23] Additional discussion of this issue can be found in the California Sex Offender Management Task Force Report 56-58 (available at casomb.org)

[24] January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 152 (available at casomb.org)

Hospital and are encouraged (though they cannot be forced) to participate in the treatment program. Approximately 25-30% of those admitted under these circumstances are actually participating in treatment in the Sex Offender Commitment Program (SOCP). The SOCP program is based on cognitive and cognitive-behavioral theories as well as the findings of the Sexual Offender Treatment and Evaluation Project (SOTEP) program and other widely accepted research literature. The treatment program includes comprehensive assessments (including penile plethysmography, polygraph examinations, cognitive and psychological assessments), individualized treatment planning and a formal progress review system. The SOCP program also provides a tutorial track for cognitively impaired individuals. The SOCP program has five phases of treatment, of which four phases occur in the institution and the fifth phase occurs as an essential component of the transition back to the community. At this time, very few persons have completed the four institutional phases in order to be released into the community; more have been discharged from the program via court appeal processes. At this point there have been approximately 15 persons conditionally released after completion of the five phase program and approximately 130 persons who did not complete treatment but have been released without any conditions (unconditionally) through the judicial process.[25]

Due to concerns about the SVP statute expressed by the community and professionals working with sex offenders in CA, the California Coalition on Sexual Offending recently conducted a thorough analysis of the SVP situation, resulting in the publication: *The California SVP Statute: History, Description, and Areas of Improvement.*[26] The CCOSO report concluded that several key areas of the implementation of the statue need to be improved. Improving the implementation of the SVP statute must be a high priority for the state of California given that the program is allocated more of the state's resources than any other sex offender services.

RECOMMENDATIONS

The following recommendations are an attempt to address the concerns and shortcomings noted above. Some of the points explain and expand upon the recommendations already stated.

A. Statewide Implementation of the Containment Model

The CASOMB strongly recommends that the sex offender management strategies collectively known as the Containment Model be implemented statewide.[27] The Containment Model has been identified by the CASOMB as the *best practice* for community supervision of sex offenders. While the Governor's High-Risk Sex Offender

---

[25] For additional discussion of this issue please see the Special Populations section of this report

[26] This publication can be found at the http://www.ccoso.org

[27] For a discussion of the Containment Model please see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 102-104 (available at casomb.org)and 2006 California High Risk Sex Offender Task Force 15-18 (available at casomb.org)

Task Force and the CASOMB have endorsed implementation of the Containment Model ,it has not been implemented in any uniform or continuous manner. A few counties have their own version of the Containment Model; most counties do not, nor does CDCR use this model.

The Containment Model calls for a collaborative effort of sex offender specific treatment providers, law enforcement supervising agents such as probation officers or parole agents, polygraphists providing specialized testing as both a treatment and monitoring tool and victim advocacy participants whenever possible. The offender is supervised and overseen within this context. If these aspects of containment are not in place, efficacy is reduced. CDCR does not use the Containment Model; there is no treatment being funded and no polygraph testing being conducted. While CDCR has a significant amount of funds and energies invested in GPS and supervision, this approach is not the full Containment Model[28]. Supervision alone is not as effective as the full Containment Model. Public safety would be increased if the Containment Model were required throughout the State for all sex offenders, whether on parole or probation.

B. Credentialing and Training Requirements for Treatment Providers

The CASOMB Treatment Committee strongly recommends that the State enact legislation to codify regulations requiring specified training for mental health professionals who provide therapy and treatment services to manage sex offenders in effort to increase public safety while most effectively managing identified sex offenders in the State of California.

Establishing authority & regulating referrals: Those who evaluate and treat sex offenders should meet the following minimum criteria for education, training, and experience. Maintaining and demonstrating evidence of one's scope of practice and scope of competence in working with adult and/or adolescent sex offenders, such as described below, is a legal and ethical responsibility of each licensed psychotherapist in California serving these populations. Bi-annual documentation of these qualifications should be maintained by a statewide body, which places the evaluator's or treatment provider's name on the approved provider listing. Approved provider status should be established separately for those purporting to be competent with evaluation, and treatment of juveniles who have offended, treatment of offenders who have developmental disabilities, and treatment of adult sexual offenders. Courts, Probation Departments, and CDCR Parole should refer only to providers who are listed as approved providers.

With appropriate funding for infrastructure, the CASOMB could potentially serve in this role.

---

[28] CDCR has estimated that implementing containment (specifically treatment and polygraph) for all sex offender parolees would cost approximately $45M. Using a similar basis for calculation, the implementing containment for HRSO populations only would be approximately $15M.

Education & Licensure: Licensed psychotherapists, psychologists, or psychiatrists who provide evaluation and assessment services to sexual offenders should have the minimum academic degree in psychology, clinical social work, marriage and family therapy, or psychiatry as well as a California license to practice independently.

Registered interns or psychological assistants may provide sex offender specific evaluation or treatment services when functioning under the supervision of a licensed practitioner who meets the established criteria. Such interns or psychological assistants may apply to the regulatory body for approval and listing.

A one-year provisional approval status level should be offered to those licensed therapists who are pursuing sufficient education, training, and experience and provide a sufficient plan to correct any deficiencies. A provider with provisional approval should not be permitted to supervise interns or psychological assistants in the area of sex offender treatment until becoming qualified as an approved provider. No licensed clinical supervisor should supervise more than four unlicensed interns or licensed therapists with only provisional approval.

Evaluator sex offender specific training: Licensed psychotherapists, psychologists, or psychiatrists who provide evaluation services, including but not limited to pre-sentencing evaluations for the Courts or evaluations for individuals involved in civil commitment processes should provide their credentials and training as evidence of an appropriate scope of practice and competence, including but not limited to training with evidence based assessment procedures such as the STATIC-99, STATIC-2002, MNSOST-R, the Stable 2007, the Acute 2007, Hare Psychopathy Checklist-Revised, penile plethysmography, sexual interest viewing time measures, or others recommended by the California SORATSO committee or such organizations as the Association for the Treatment of Sexual Abusers (ATSA) or the California Coalition on Sexual Offending (CCOSO). Those who evaluate adolescents or persons with intellectual disabilities should document similar training in these specialized areas of evaluation, as defined by the SORATSO Committee or as recommended by ATSA or the CCOSO. Evaluators with less than two years experience should provide the names of persons with whom they will consult when ethically appropriate or required under licensing regulations. Thirty (30) hours of training in these assessment topics bi-annually is considered the minimum amount of training to demonstrate a scope of practice in this area.

Treatment provider sex offender specific training: Psychotherapists who provide therapy or treatment services with adult or adolescent sexual offenders should demonstrate their education and training as evidence of an appropriate scope of practice in each of these areas. Thirty hours of training bi-annually is considered the minimum amount of training to demonstrate a scope of practice in this area.[29]

Treatment provider sex offender specific experience: Psychotherapists who provide treatment services to adult or adolescent sexual offenders should have a minimum of

---

[29] For specific training content recommendations please see **APPENDIX G**

seven hundred and fifty hours of direct client service experience, inclusive of therapy and case management activity, annually to evidence their scope of practice. Those treating both adolescents and adults should provide documentation of experience with both populations. Registered interns or psychological assistants may accumulate hours of experience under the supervision of a licensed psychotherapist who meets these criteria. Interns or psychological assistants should co-facilitate one hundred hours of direct services with an approved licensee before being eligible for approved provider status. Treatment providers who do not meet the hours of service requirement may apply to be listed as approved providers if there are reasonable limitations on experience hours such as working in rural counties with fewer referrals.

Required Programming Structure and Content

Approved providers should submit program documentation that evidences utilization of evidence based practices.[30]

C. Mandatory Treatment and Funding

Despite state budgetary fluctuations from year to year, public safety can be increased through implementation of mandatory treatment of sexual offenders under supervision.

Emerging Issue:
CDCR was compelled by the 2008-2009 budget crises to terminate or suspend their contracts for outpatient sex offender treatment services to High Risk Sex Offender parolees. While parolee sex offenders are ordered to have visits to the Parole Outpatient Clinic in their county or region, such services are in no way equivalent to the comprehensive treatment that is

Sex offender specific treatment has been found to reduce re-offenses by up to forty percent.[31] Since convicted and/or adjudicated sex offenders are a known and accessible risk group, treatment for these individuals should be mandated for all probation and paroled sexual offenders.

Sex offenders who are on probation are ordinarily on a self-pay basis with limited, if any, financial support from county probation departments. There are approximately 10,000 sex offenders on probation at any given time; it is unknown how many of these are current participants in treatment in the community. It is unknown how many sex crimes are pled to with a stipulation that the offender does not have mandated treatment. CDCR does not currently fund outpatient treatment for the

[30] For recommendations related to specific documentation of training content and structure please see **APPENDIX H**

[31] January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 137-156 (available at casomb.org)

approximately 6,788 sex offenders on parole, nor is there a formal treatment program implemented in any State prison in California.[32]

CDCR solicited a prison based treatment program design which has been approved but not funded. [33] Currently, there is no formal sex offender treatment programming implemented in the adult prison system in California yet the State employs post sentence civil commitment on a class of high risk mentally ill sex offenders (CA SVP Act). The CASOMB strongly recommends funding be allocated to implement the prison based program as well as post-institutional treatment within structured re-entry processes throughout the State. Public safety can be enhanced through treatment and use of the Containment Model with the thousands of sex offenders released from California prisons each year.

Programs that respond to victims of sexual assault and programs that assist victims in dealing with the harm and pain of the sexual assault should be fully funded. To protect against further victimization, funding for mandatory treatment, with credentialed and approved treatment providers, should be authorized by state government to assist sex offenders in their participation in treatment. Sex offenders should participate in paying for their own treatment to the greatest extent possible based on ability to pay.

---

[32] It should be noted that 2009 CDCR held a planning summit to examine implementation issues related to establishing an institutional sex offender treatment program.

[33] 2007 California Sex Offender Management Task Force Report (available at casomb.org)

Re-entry, Supervision and Housing

The release of individuals from prisons to communities is a practice that has long been fraught with systemic challenges and one which evokes considerable public concern. It is even more problematic when the issue involves sex offenders returning to communities. Myths surrounding inflated recidivism rates, ineffective treatment, and the publicity surrounding highly publicized cases involving predatory offenders fuel negative public sentiment and exacerbate concerns by policymakers. For the purposes of this report, re-entry is defined as the period of time during which the offender is placed under community supervision. For most sex offenders in California, this is commonly 3-5 years for both probation and parole.

RE-ENTRY RECOMMENDATIONS:

- The most important consideration when evaluating the success of a correctional program is whether the community is safer once the offender is released from supervision then it was prior to incarceration and community supervision. Therefore, it is recommended that all correctional programs utilize recidivism reduction as the primary method of measuring performance.
- High risk offenders pose the greatest risk to the community. It is recommended, that the limited resources that are available in this fiscally difficult time be primarily used to monitor and treat the highest risk offenders.
- The risk of re-offense for any type of offender, and especially sex offenders is greatest immediately after release from incarceration. Resources should be front loaded to provide extra monitoring and supervision during this time.
- The only model of supervision that has consistently shown to provide increased public safety is the Containment Model. It is recommended that California follow evidence-based practices and implement a consistent Containment Model at both the state and county level.
- The most recent research into treatment program options for sex offenders, has shown that treating all criminogenic risk and needs factors, and not just concentrating on sex offense risk factors, has had the greatest impact on lowering recidivism rates. It is recommended that all sex offender treatment programs assess and treat criminogenic factors.
- Too often in California, we are spending most of our time and resources increasing surveillance and supervision while neglecting treatment. Research is consistently showing that the lowest recidivism is occurring when both treatment and surveillance are more evenly balanced in an individually developed case plan.

There is a growing body of correctional research and emerging models for improving reentry outcomes that have recently been developed.[34] The National Institute of

[34] 2007 California Sex Offender Management Task Force Report 61- 72 (available at casomb.org)

Corrections and the Center for Sex Offender Management under the U.S. Department of Justice are examples of organizations which have published national models for supervision of sex offenders in the community.

Community supervision agencies have utilized several different models when evaluating the effectiveness of their sex offender supervision. The most common method is called a process evaluation. This method entails counting the level of services (drug and alcohol programs, anger management treatment, sex offender treatment) and the numbers of contacts. Outcome evaluations that measure increases in reduction of recidivism and sexual re-offense have been conducted far less frequently. And while all sex offenders need close levels of supervision, limited resources can best be utilized by evaluating which elements and levels of supervision produce the greatest reduction in recidivism.

The risk of sexual re-offense as well as any other type of serious offense is greatest in the first year following release from custody. This is true in national recidivism studies as well as those conducted in California. CDCR data for sex offender recidivism showed that more new offenses occurred in the first year following release then in the next two years combined. [35] Therefore, increasing the intensity of supervision and treatment during the first year seem to provide the greatest opportunity for recidivism reduction.

Utilization of a "Containment Approach"[36] to community supervision is recognized as a *best practice* approach. This model relies on effective communication between local law enforcement, treatment providers, polygraph examiners, interested citizens and community supervision officers to provide a web of protection for the community.

> "Tools such as GPS and parole supervision can fall tragically short when jurisdictions don't work together to develop comprehensive strategies to share information and communicate about supervision practices. This tragic case [Jaycee Dugard] highlights the need for systemic changes that will promote collaboration between agencies and the community at large.
>
> Community safety depends on what we see, what we know and how we talk to each other."
>
> USA Today Editorial
> September 3, 2009

To date, there has never been a complete estimate about what implementing the Containment Approach in California would cost. The California Department of Corrections and Rehabilitation has estimated that implementing the treatment and polygraph elements of the approach

---

[35] January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California (available at casomb.org) 74

[36] For a discussion of the Containment Model please see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 102-104 (available at casomb.org) and 2006 California High Risk Sex Offender Task Force 15-18 (available at casomb.org)

(omitting the community coordination and law enforcement costs) for the parole population would cost approximately $15,000,000.

Studies about the California sex offender population shows us that it is more likely that a sex offender will re-offend with some other type of criminal offense than with a new sex offense. Community safety can best be served if supervision officers are able to assess criminogenic risk and develop program goals that include all criminal violations and not just sex offenses.

Community Supervision of Sex Offenders

It is estimated that in the United States, 265,000 adult sex offenders are under some form of supervision in the community. (Greenfield 1997) These offenders represent a very heterogeneous population, and the risks that these offenders pose to the community vary tremendously. While many sex offenders are entering prisons each year, large numbers are also being released. Nationally, between 10,000 and 20,000 are estimated to be returning to communities each year. (Center for Sex Offender Management, 2008)

There are approximately 66,000 registered sex offenders in California. Of that number, approximately 6,700 are on parole and about 10,000 are supervised by county probation. Most offenders who are convicted of one of more sex crimes will be supervised in the community at some point either immediately following sentencing or after a period of incarceration in jail or prison[37]. These offenders present unique challenges to the probation and parole departments that are primarily responsible for supervising them. Because of the potential volatile community responses to sex offenders and the severe harm that re-offenses would cause potential new victims,

[37] For a longer discussion about the distribution of sex offenders in California see the January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 51-66 (available at casomb.org)

Registered Sex Offenders in California

community supervision of sex offenders is of critical importance to criminal justice agencies and the public. (Managing Sex Offenders in the Community: A National Overview, 2001)

The primary goal of managing sex offenders in the community is the prevention of future victimization. In order to accomplish the primary goal, there are several key elements within sex offender management that need to be accomplished.

Collaboration: Collaboration among those agencies initiating and implementing effective supervision and treatment practices, as well as other law enforcement and community organizations is an essential piece to providing increased community safety. Due to the secrecy, manipulation and deception that often accompany sex offending behaviors, it is essential that as many eyes as possible be involved in supporting the goals of effective community supervision and reintegration.

Victim-Centered Approach: Since a primary goal of supervision is the protection of victims and the prevention of future victimization, supervision agencies should work closely with victim advocacy organizations to ensure that their policies do not re-traumatize victims of sexual assault, or inadvertently jeopardize the safety of others.

Sex Offender Specific Treatment: Mandated specialized treatment as part of probation or parole conditions is and integral and essential component of effective community supervision. The offense specific treatment that research has shown to be most effective holds offenders accountable, is victim-centered, and is limited in its confidentiality. It is based on the notion that when an offender is effectively taught to manage successfully his propensity to sexually abuse, he becomes less of a risk to past and potential future victims.

Clear and Consistent Policies: Clear and consistent policies at all levels (state, local, and agency) are crucial components of community supervision. Clear policy defines how cases will be investigated, prosecuted, and adjudicated. It also defines the method of community supervision, the roles various agencies play in the supervision process, and the response to indications of risk of relapse.

The experiences of probation and parole agencies across the nation indicate that sole reliance on commonly used supervision practices (e.g., scheduled office visits, periodic phone contact, and community service requirements) does not adequately address the unique challenges and risks that sex offenders pose to the community. In order to address these challenges, it is imperative that convicted sex offenders receive, in addition to incarcerative sanctions where appropriate, a period of community

supervision. During this period of supervision, the supervising agency is able to assess an offenders place of residence and employment, restrict contact with minors or other potential victims, select appropriate treatment for the offender, and establish, if necessary, other restrictions that diminish the likelihood of re-offense.

Sex offenders must be monitored intensively during community supervision in order to evaluate their level of commitment to and compliance with all imposed special conditions.[38]

RE-ENTRY AND SUPERVISION RECOMMENDATIONS:

- Local communities (cities or counties) should be required to identify appropriate, affordable, and compliant housing for sex offenders prior to implementation of, or if they presently have, local restrictions for sex offenders.

Sex Offender Housing

Finding appropriate and affordable housing has always been difficult for sex offenders under community supervision.[39] No one is anxious to have sex offenders living in close proximity or anywhere in their neighborhoods. Landlords have also expressed concern about renting apartments or hotel rooms to sex offenders since their addresses now show up on public web sites.[40]

As a result of community safety concerns, many states and communities have recently passed residence restriction laws that limit where sex offenders may live.[41] Most laws and ordinances restrict sex offenders from living in proximity to schools, parks, and other places children congregate. Presently, 32 states, including California, have passed laws and ordinances of this type. As a result, sex offenders now find it much more difficult to find a place to live, and many are now homeless and/or are evading community supervision.

The hypothesis that sex offenders who live in close proximity to schools, parks and other places children congregate have an increased likelihood of sexually reoffending

---

[38] For examples of special conditions of supervision please see **APPENDIX I**

[39] See (2008) Homelessness among Registered Sex Offenders in California: The Numbers, The Risks and The Response (casomb.org)

[40] See the proceedings of the California Summit for Safe Communities available at casomb.org

[41] For more information about the implementation of residence restrictions in California see January 2008 CASOMB Assessment of Current Management Practices of Adult Sex Offenders in California 121-133 (available at casomb.org)

remains unsupported by research.[42] On the contrary, the studies that have been completed show there is almost no correlation between sex offenders living near restricted areas and where they commit their offenses. Additionally, there is growing evidence that supports that sex offenders who lack a stable living situation are at increased risk of re-offense.

Across the nation, different states have conducted research that brings into focus specific consequences that are the result of residence restrictions. First and foremost, all studies have reported diminished housing options for sex offenders, especially in major metropolitan areas. In Orange County Florida, 95% of all residential properties were located within 1000 ft. of schools, parks, child care centers or school bus stops. (Zandbergen & Hart, 2006) In Colorado, researchers found that in heavily populated areas, residences farther than 1,000 ft. were virtually non-existent. (Colorado Department of Public Safety, 2004) In Newark, New Jersey, 93% of the city's territory is located within 2,500 ft. of a school and would therefore be unavailable to sex offenders. Geographic Information System (GIS) mapping in San Francisco, California has determined that nearly all possible residential locations in the city and county are within 2,000 ft. of a park or school, and therefore unavailable to paroled sex offenders.

An issue that has been particularly troubling to California cities is the clustering of sex offenders. When residency restrictions were enforced, a large percentage of residential properties became off limits to sex offenders. The percentage of off-limits housing in urban areas was usually estimated as somewhere between 50 - 99%. This resulted in many sex offenders scrambling to find a living situation that was both affordable and compliant with the law. Many times, due to the limited availability of options, sex offenders could only find a small number of available apartment houses, motels, or other living arrangements that were available to them. This caused several apartment complexes or motels to have increased occupancy of sex offenders. When citizens discover that a particular location in their neighborhood has a high density of sex offenders they can become very concerned. Such a situation often results in complaints being filed with police and local media being contacted, in an effort to resolve these concerns.

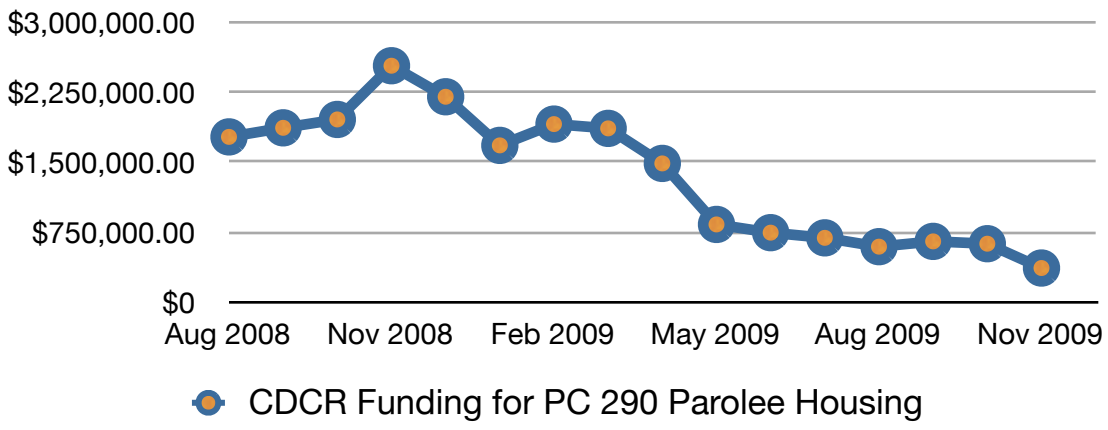
In the past, in recognition of the importance of stable housing for both community safety and offender stability, CDCR provided some limited subsidies for sex offender parolee housing. Due to the California budget crisis and significant reductions in agency resources the Department issued Policy Number 09-01 in February, 2009, which limited the duration and amount of support available for sex offender housing.

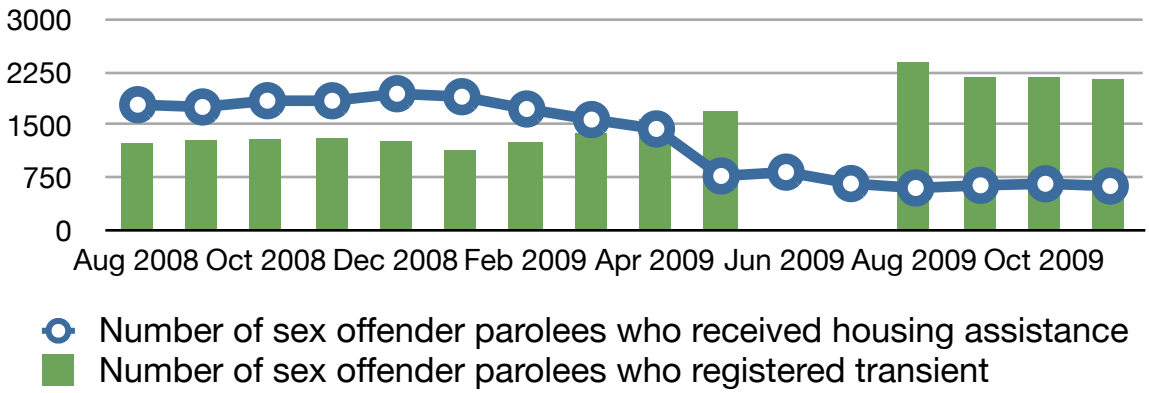
The following graphic representations show the relationship between funding for housing assistance and the increase in transient status (homelessness) among sex

---

[42] A Minnesota Department of Corrections study of 329 high risk sex offenders revealed that recidivism occurred in only 13 cases, while none of the offenses occurred in school grounds, two of those occurred in parks. In both of these cases, however, the perpetrators lived miles from the crime scene and drove a vehicle to commit the offense. (Minnesota Department of Corrections, 2003)

offenders on parole. The significant change occurring at the time the new policy went into effect (February 2009) can be noted.





The loss of CDCR housing assistance, when combined with ever-increasing areas of the state that are off-limits for housing seems to have had an adverse impact on offender transience.[43] It will be important to examine this trend over time.

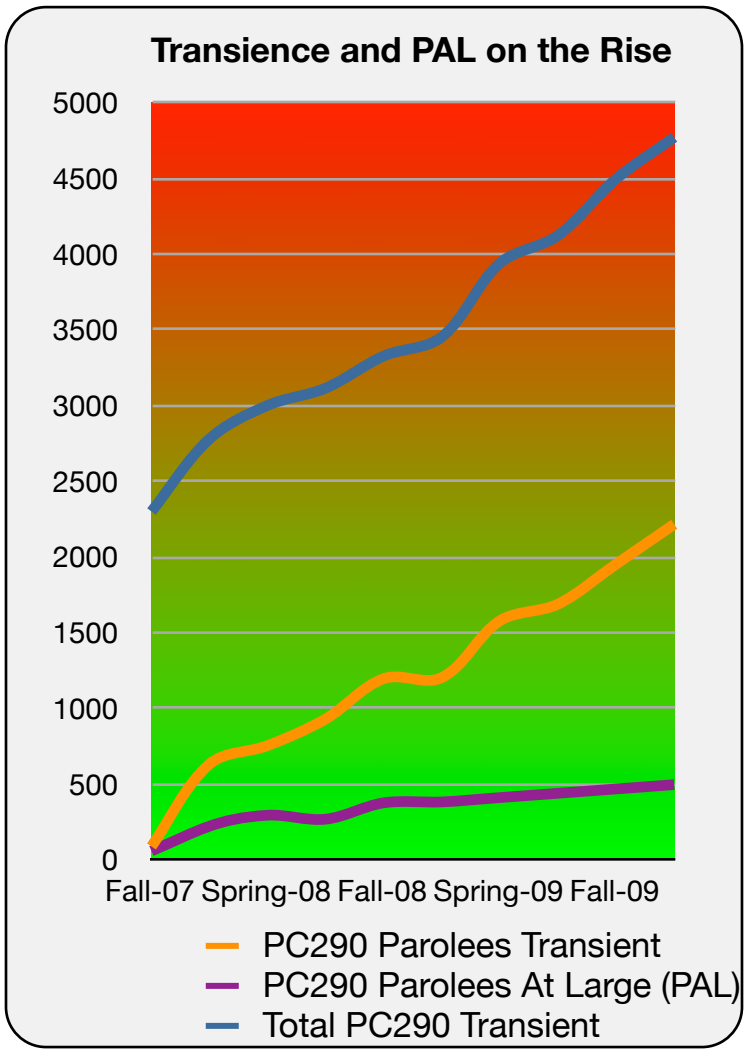
Most citizens either do not connect the increased density of sex offenders - "clustering" - with limited housing option, or they just don't care about the reason. They want to feel safe. Often, the citizens of the neighborhood place pressure on the owner of the motel or apartment complex or on CDCR to solve this problem. The solution usually results in sex offender parolees being required to find another place to live. Since the alternatives are so limited, many of these sex offenders required to move, end up becoming homeless and transient.

[43] parolee transient data for June 2009 and July 2009 was unavailable

Sex Offender Transience, Homelessness and Parolees at Large.

As housing options across California became less available after the residence restrictions of Proposition 83 began to be implemented, homelessness of sex offenders increased. In 2007, 88 parolees were homeless.[44] Now, less than two years later, that number has risen to 2,088 parolees who are registered as transient/homeless, the total number of sex offenders who are officially registered as "transient" (including parolees) has surpassed 5,000.

Homelessness, unemployment, and lack of social support may end up being factors facing many sex offenders, both those who are re-entering California communities and those who are continuing registered sex offenders. These factors increase dynamic risk and therefore may increase re-offending behaviors.[45]



Transience poses significant challenges for supervision. Even with GPS monitoring, without a stable residence it is difficult to ensure that offenders are complying with their terms of supervision.

Even though transience among sex offenders in California has increased significantly, the number of Parolees At Large (PAL) has not increased at the same rate. (Note: A parolee at large is one who has failed to report his parole agent and has "disappeared.") It would seem that despite an escalating rate of homelessness among California parolees, many are still managing to remain in compliance with their parole supervison requirements.

At this time there is no definitive understanding about why PAL numbers in California have not increased at the same

[44] 2007 was the first year that CDCR began active enforcement of Proposition 83 residence restrictions

[45] See (2008) Homelessness among Registered Sex Offenders in California: The Numbers, The Risks and The Response (casomb.org)

rate.[46] Some speculation points to the somewhat unique nature of California's law that allows offenders to legally register in a transient status. Others point to the state's GPS requirement.

City and County Residence Ordinances

HOUSING RECOMMENDATIONS:

- Cities and counties should not pass sex offender residency ordinances that are in conflict with or exceed state law
- Cities and counties should determine a process for notifying CDCR and/or probation when they have passed a sex offender restriction ordinance
  - In order to mitigate the potential public safety risk of increased offender transience, California should target the use of residence restrictions utilizing a 'hybrid' model of restrictions similar to a 2009 Iowa law:
    - *Residence* restrictions (2000 ft.) apply to the most serious offenders (SVP, repeat sex offenders, and offenders convicted of violent sex offenses) who have committed an offense against a child.
    - *Loitering* restrictions apply to designated Pen. Code, § 290 registrants in places where children congregate (child safe zones)

At least ten states have enacted local residence and/or loitering restrictions for sex offenders. In a few states there are local ordinances but no state laws in this area, while other states, like California, have both. In several states there are over one hundred local ordinances, while others have just a few. What seems to be a common characteristic of these ordinances is that once a community passes a residency/loitering ordinance, surrounding communities feel compelled to pass one also. Policymakers and the public are often fearful that if they do not follow suite, all of the sex offenders will relocate into their community.

In 2008, the National Governors Association noted:

> *These restrictions are forcing offenders out of urban and suburban centers into isolated rural areas where providing close supervision is much more difficult. A survey of 135 sex offenders in Florida found housing restrictions increased isolation and decreased stability, making it more likely that they would reoffend. The study, published in the International Journal of Offender Therapy and Comparative Criminology, also found that sex offenders reported these restrictions actually increased "triggers for re-offense." These restrictions also may contribute to sex offenders becoming indigent and homeless, making it nearly impossible to monitor them and supervise their behavior.*

---

[46] In Iowa, one of the first states in the United States to widely implement residence restrictions, within six months of implementation the number of sex offenders who were in violation of that state's registration statute had doubled -Des Moines Register (2006)

Very recently, (May 2009) the New Jersey Supreme Court struck down sex offender residence restrictions in over 100 communities. This was the first time that an appeal of residence restrictions had reached the state Supreme Court level. The Court held that sex offender monitoring fell under the purview of Megan's Law and did not fall to the level of the local communities.

In California, PC 3003.5 (c) allows municipal jurisdictions to enact local ordinances that may further restrict the residence of any person required to register as a sex offender. This Penal Code section was enacted as part of the Jessica's Law statute in 2006. Since that time, approximately 50 California cities and 6 counties have enacted local ordinances. All of them have either expanded the distance of the residence restriction (up to 3000 ft.) or have added additional restricted locations, such as child care centers, libraries, arcades, school bus stops, and other places children might congregate. Some have done both. In addition, several of the ordinances have created what have been called "child safe zones". These are locations where sex offenders may not enter or loiter about within a specified distance, usually about 300 ft. Several of the ordinances have limited the density of sex offender residences. They have prevented more than one sex offender from living in any motel, hotel, mobile home park, or apartment complex. One of the most notable ordinances prohibited a sex offender from residing within 1000 ft. of another sex offender. Most often, failure to adhere to local ordinances is deemed to be a misdemeanor. Even with the rapid expansion of local residence ordinances, very few if any jurisdictions in California are actually enforcing these laws, leaving community members unclear about the scope and ultimate utility of these approaches.

The California Sex Offender Management Board recommends that the California State Legislature, Governor, and local governments **reconsider residency restrictions** to create an offender housing and supervision solution that balances three essential concerns:
Public safety – Community sex offender management strategies should promote proven public safety strategies. Residency restrictions that preclude or eliminate appropriate offender housing can threaten public safety instead of enhancing it.
Fair Share - Offender populations should, as dictated by statute, return to their county of conviction. No jurisdiction, county or city, should be forced to accommodate a significantly disproportionate number of offenders due to the residency restrictions in adjoining jurisdictions.
Local Control - Local governments, in collaboration with state agencies, should collaboratively identify not only areas where offenders should not reside or loiter but also a sufficient number of areas that are suitable and appropriate for offenders to live.
(CASOMB 2009 Progress Report)

Presently, there has been no protocol for local municipalities to notify CDCR when a local sex offender ordinance has been enacted. Therefore, it has not been possible for CDCR parole agents to proactively support these ordinances once they are passed. Parole agents generally become aware of ordinances when a parolee is in violation of an ordinance and it comes to the attention of local law enforcement or elected officials. Parole agents do warn parolees that there is a chance that a local community has a residence ordinance and that it is each parolee's duty to know the terms of and abide by any local ordinance.

In November 2009, the California Supreme Court heard arguments in the cases of four parolees who claimed the residence restriction enacted in Jessica's Law did not apply to them. The argument was that the law was intended to be prospective only and, since the petitioners were released on parole after Jessica's Law was enacted, it did not apply to them. At the time of this writing, an opinion had not been issued.

Global Position Satellite Tracking and Monitoring

Law enforcement officials, especially probation officers and parole agents, are increasingly utilizing electronic monitoring through the use of Global Positioning Satellites (GPS). This technology is now being utilized in at least 42 states. Many states require certain offenders to be monitored for the length of their probation or parole, while other states designate certain high risk and/or child victim offenders to register for specified amounts of time up to and including lifetime. California is one of only two states that mandates that all registered sex offenders be monitored for life - a requirement created by Jessica's Law.

GPS MONITORING RECOMMENDATIONS:

- Utilize GPS monitoring only in conjunction with some form of community supervision, with the understanding that some high-risk offenders may need to be subject to extended supervision (including lifetime supervision for exceptionally high-risk offenders)
- Prioritize the use of GPS monitoring primarily for serious and high risk sex offenders
- Allow GPS monitoring to be minimized or eliminated after a defined period of time if there have been no new offenses and there has been satisfactory compliance with all terms of registration and parole conditions, to be determined by the supervising

In June, 2005, CDCR Division of Adult Parole Operations (DAPO) launched a pilot GPS program by placing electronic akle bracelets on 80 high risk sex offenders in San Diego County. Soon after, GPS monitoring programs were begun in Orange County, San Bernardino County, Fresno County and Kern County. All of the funded GPS units were scheduled to be in use by July 1, 2006.

On November 7, 2006 California passed Proposition 83, known as Jessica's Law. This proposition required, among other things, that all registered sex offenders released on parole be monitored for life, by using Global Positioning Satellite (GPS) technology in the form of a satellite-tracked ankle bracelet. The law was passed with little information about how it would be implemented or evidence of whether GPS technology would protect Californians from sex offenders. According to a survey conducted by the Interstate Commission on Adult Supervision in April of 2007, California was already among the most extensive users of GPS for the monitoring of sex offender parolees prior to the passage of Proposition 83. Only Florida and Texas had programs of comparable size. (Turner & Jannetta 2008)

The passage of Proposition 83 has led to over 6,788 sex offender parolees being placed on GPS monitoring. This is by far the largest use of GPS monitoring anywhere in the world. It is conservatively estimated that the use of GPS in the state of California is presently costing approximately $65,000,000.00 per year.[47] The effectiveness and cost effectiveness of widespread use of GPS with sex offenders in California has not been evaluated.

To date, it remains unclear what state or local jurisdiction will be responsible for the lifetime post-supervision GPS monitoring described in Proposition 83. In fact, many of the challenges that localities identified in 2007-when the CASOMB examined this issue-exist today. A number of significant questions and concerns have been raised about California's use of GPS with sex offenders. They include the following:

> *Current supervising authorities (such as CDCR or local probation) maintain that they have neither the jurisdiction nor authority to supervise (or monitor) individuals beyond their term of supervision.*
> *• Local law enforcement agencies have also been identified as potential monitoring authorities for the post-supervision GPS portion of Proposition 83. While many these agencies have experience and training related to peacekeeping activities, generally few local law enforcement agencies have resources or the infrastructure for GPS monitoring.*
> *• Locally based agencies would also face implementation challenges with GPS monitoring post-supervision because of the transitory nature of most post supervision sex offenders. County probation, sheriff's and police chiefs have a proscribed jurisdiction in which they conduct their activities and lack the capacity to monitor offenders if they move between cities, counties and states.*
> *• Even if post-supervision GPS monitoring were to be fully funded, local agencies would still face fundamental challenges with managing multi-jurisdictional monitoring and information sharing. Local governments and law enforcement agencies have repeatedly stressed the importance of issues such as: equipment interoperability, compatible mapping platforms for crime scene correlation, and a common understanding of what data will be collected via GPS technology.*
> *• It is possible to imagine that a state law enforcement agency might also be tasked with post-supervision GPS. While a state-level law enforcement agency would avoid the multi-jurisdictional challenges that local law enforcement agencies would face with post-supervision GPS, role confusion and a lack of monitoring tools would remain.*
> *• All agencies examined (both state and local) have indicated that they lack the financial resources to implement this new program. Agencies at the local level, in particular, stressed the potentially severe economic consequences of adding post-supervision GPS monitoring duties to already stressed workloads (CASOMB Letter to Secretary, 2007).*

---

[47] CDCR 2009 testimony to the California Legislature. Additionally, according to CDCR active GPS monitoring costs approximately $26 per day / per offender ($9,490 per year). Passive GPS monitoring costs $17 per day per offender ($6,025)

Although many states are now reporting the use of GPS technology to monitor sex offenders, there are still very few evaluations of their usefulness in providing public safety and lowering of recidivism rates. There seems to be some anecdotal sentiment that is supportive of the usage of GPS monitoring, but very little statistical data to support its effectiveness in preventing re-offense.

Individual state evaluations have shown mixed results In terms of the ultimate efficacy of GPS on recidivism and criminal behavior.[48] The consensus of the GPS evaluations seem to be that this tool is most effective when utilized as part of an overall "containment model" of supervision and when used with high risk offenders.[49]

[48] For a summary of several state GPS evaluation studies see **APPENDIX J**

[49] For an extended analysis of the efficacy of GPS in the context of supervision see CASOMB GPS letter to Secretary Tilton (casomb.org)

Registration and Notification

California presently has the largest number of registered sex offenders of any state in the United States. The state have about 90, 000 registered sex offenders, about 68,000 of whom are in the community. The rest are currently incarcerated. This large number is due to the large overall population of the state, the length of time California have been registering sex offenders (since 1947, retroactive to 1944), the length of time that registration (lifetime) is required for all registrants, and the large number of offenses that require mandatory sex offender registration.

California is one of the few states that has lifetime registration for all sex offenders. On the positive side, this allows the public to be aware of the majority of sex offenders living in their neighborhoods. On the negative side, the public and local law enforcement agencies have no way of differentiating between higher and lower risk sex offenders. In this one-size-fits-all system of registration, law enforcement cannot concentrate its scarce resources on close supervision of the more dangerous offenders or on those who are at higher risk of committing another sex crime.

Recommendations

- Not all California sex offenders need to register for life in order to safeguard the public and so a risk-based system of differentiated registration requirements should be created
- Focusing resources on registering and monitoring moderate to high risk sex offenders makes a community safer than trying to monitor all offenders for life
- A sex offender's risk of re-offense should be one factor in determining the length of time the person must register as a sex offender and whether to post the offender on the Internet. Other factors which should determine duration of registration and Internet posting include:

  Whether the sex offense was violent

  Whether the sex offense was against a child

  Whether the offender was convicted of a new sex offense or violent offense after the first sex offense conviction

  Whether the person was civilly committed as a sexually violent predator

- Monitoring of registered sex offenders once they are no longer under any form of formal community supervision is critical to public safety. Therefore, the following recommendations are made regarding local law enforcement.
  - There should be continued and additional funding for Sexual Assault Felony Enforcement (SAFE) teams in California
  - There should be mandated and designated resources which would enable law enforcement to verify the information supplied by the registrant at the time of registration
  - Law enforcement should allocate resources to enforce registration law and actively pursue violations
  - Training should be made available to district attorneys, judges and law enforcement on registration and community notification laws
  - Registering agencies should participate in multi-disciplinary teams and the containment model when monitoring registrants on formal supervision
  - Law enforcement should maximize resources and results by devoting more attention to higher risk offenders

Risk Assessment

Since it is being recommended that a revised system of registration be developed based largely on risk of reoffending, a review of key information about the history and methods of risk assessment is in order.

A. Risk Assessment in Other States

There are twenty states which were using some form of risk assessment by the end of 2008. (Velasquez, The Pursuit of Safety: Sex Offender Policy in the United States, Vera Institute of Justice, Sept. 2008, at Appendix.) Some, but not all, use empirically based risk assessment instruments to determine level of risk. Others use committees to determine risk factors without basing the factors on empirical research to verify that the factors correlate to risk of reoffense. Recent research shows that pure actuarial analysis using empirically based risk assessment instruments is more predictive of re-offense than a combination of unstructured clinical judgment and use of an empirical instrument. (Hanson, K., et al., The Accuracy of Recidivism Risk Assessments for Sex Offenders: A Meta-Analysis, p. 10 (2007).

B. Risk Assessment in California

California currently uses a pure actuarial approach to risk assessment for purposes of sentencing, placement on supervision, treatment, and use of GPS monitoring devices. (Pen. Code, § 290.03-08; 1202.8; 1203.) The risk assessment instrument being used both pre-sentencing and prior to release on parole for adult sex offenders is the Static-99. The instrument chosen to assess juvenile sex offenders is the JSORRAT-II. Both instruments were chosen by the California risk assessment committee (SARATSO Committee - see Pen. Code, § 290.03-04).[50] As of December 2009, the SARATSO Committee had not yet chosen a dynamic risk assessment instrument for California.

However, the assessed risk of re-offense today plays no role under California law in determining the need to register, the duration of registration, or the extent of community notification. California adult offenders must register for life for most sex offenses. (Pen. Code, §§ 290, 290.5.) Nor does risk assessment determine which juvenile sex offenders are required to register. However, it is not within the statutory mandate of this Board to recommend changes to laws pertaining to juvenile sex offenders.

Some sex offenders are eligible to petition the court for a certificate of rehabilitation, usually 10 years after release from custody. Whether a certificate of rehabilitation is

---

[50] the SARATSO web site is found at http://www.dmh.ca.gov/Services_and_Programs/Forensic_Services/Sex_Offender_Commitment_Program/SARATSO.asp [http://www.dmh.ca.gov/]) The web site for the SARATSO Committee is moving to www.cdcr.ca.gov in 2010.

granted is a discretionary decision by a trial court. (Pen. Code, §§ 4852.01, et seq.) Until 1996, registered sex offenders who obtained a certificate of rehabilitation were no longer required to register. In 1996, Penal Code section 290.5 was amended to prohibit most sex offenders, including offenders whose offense was consensual sexual activity with teens age 14-17, from obtaining relief from registration even when a court grants a certificate of rehabilitation. Some sex offenders are barred from applying for certificates of rehabilitation, even if the offense was a consensual one with a peer. (Pen. Code, § 4852.01.) For example, a boy age 18 who has consensual sex with a girl age 13 and who is convicted of lewd and lascivious acts with a child under 14 (Pen. Code, section 288), can never obtain a certificate of rehabilitation, nor can he ever be released from the duty to register as a sex offender (absent a governor's pardon).

The purposes of sex offender registration are to assist law enforcement with investigating new sex crimes and keeping track of the whereabouts of convicted sex offenders as well as to deter individuals from committing new sex offenses. (U.S. DOJ, CSOM, Legislative Trends in Sex Offender Management, Nov. 2008, at p. 4.) Trial courts are given no discretion in most decisions about sex offender registration in California. While courts may, in their discretion, order registration for offenses that are sexually motivated after making specified findings at sentencing (Pen. Code, § 290.006), the same courts may not terminate the duty to register of a sex offender who presents credible proof of rehabilitation 10, 15, or even 25 years later. This is true whether or not the offender is at low risk to re-offend, as determined by empirically based risk assessment.

The fact that there is no less-stringent alternative to the California requirement for lifetime registration may actually decrease court orders for sex offender registration, in cases where registration is discretionary, because there are no options for a lesser duration, which a court may deem fairer to a particular defendant. Lifetime registration may also distort the plea bargaining process. Charges are modified and offenders plead to inappropriate offenses to avoid the consequence of lifetime registration. Distortion of the plea process results in pleas to offenses which do not require sex offender registration, despite the need for at least some period of registration and monitoring. Lack of less-than-lifetime options sometimes also leads to illegal orders shortening the period of registration.

Although the cost of registering and monitoring registered sex offenders statewide has not been quantified, there is a fiscal burden associated with these functions at both the state and local levels. Focusing on lifetime registration for offenders who are higher risk, more violent, or who are repeat offenders allows cost savings while at the same time permitting more intensive monitoring of those offenders most likely to re-offend.

Duration of Registration and Community Notification

A. Duration of Registration in Other States

Other states use varying combinations of years required for registration, often

depending on risk level or offense:

- Half of the states require 10 years for the majority of registrants, and life for the rest, using either risk assessment or offense-based classifications to determine who registers for life.

- Some states allow registrants to petition the courts for termination of registration, often after 10 years of registration.

- Five states require registration for 15 years, 25 years, or life, depending on the offense or tier level.

- Other states use a combination of 15/life; 20/life; 25/life; 5/10/20/life, 10/25/life; 10/15/25/life; or 10/15/20/life, depending on risk or offense classifications.

- Four states (California, Alabama, Florida, and South Carolina) require lifetime registration for all registrants, and one state requires 15 years for all registrants.

Usually, lifetime registration is predicated either on the offense itself being classified as aggravated, the offender being classified as high risk (determined either by empirical risk assessment or offense-based classifications), or a statutorily defined sexual predator, or being classified as a sexual recidivist. In most states, the duration of the registration period is shorter for juveniles and nonviolent sex offenders. (Velasquez, The Pursuit of Safety: Sex Offender Policy in the United States, Vera Institute of Justice, Sept. 2008.)

B. Application to California

The majority of sex offenders released on parole in California after 2005 have risk assessment scores under 4 on the Static-99. In December 2009, the California Department of Justice determined that the Static-99 score distribution for the 28,612 registered sex offenders in the DOJ database, whose risk assessments were done prior to release from prison or at pre-sentencing, was as follows:

Percentage of Assessed Offenders in
Each Static-99 Score Category:

0 = 12.45%
1 = 18.92%
2 = 19.84%
3 = 17.74%
4 = 13.21%
5 = 7.89%
6+= 9.96%

The California score distribution is consistent with the percentages of sex offenders found in each score category in the risk assessment study which was the basis for the Static-99 risk assessment tool. (Hanson, Morton, & Harris, "Sexual Offender Recidivism Risk: What We Know and What We Need to Know," Ann. N.Y. Acc. Sci. 989:154–166 (2003).)

The CASOMB recommends a three-tier system of registration, which will assign a tier level to each sex offender depending, in part, on individual risk assessment, history of violent convictions, and sexual offense recidivism. it is also recommended, based on the tier determination, that sex offenders in tiers 2 and 3 be posted on the public Megan's Law Internet web site (www.meganslaw.ca.gov).

C. Community Notification

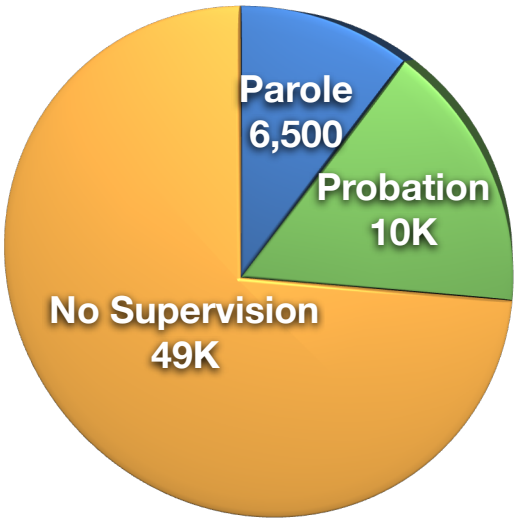
Community notification (Megan's laws) were enacted in the 1990's to raise public awareness of sex offenders in the community. California has two forms of community notification. Notification at the local level is risk-based, although not necessarily informed by empirically based risk assessment. If law enforcement determines that a registered sex offender poses a risk to the public, notification can be made as broadly as necessary to control the risk posed. (Pen. Code, § 290.45, subd. (a).)

However, notification via the state's Megan's Law Internet web site is currently "offense-based," rather than risk-based. Sex offenders with designated offenses are displayed on the site with disclosure of either full home address or only ZIP code, depending on offense. Others are not displayed on the public web site, as the Legislature did not deem their offenses serious enough to merit Internet disclosure. (Pen. Code, § 290.46.) Offense-based classification systems may not target the most dangerous sex offenders or those at highest risk of re-offending.

Of the states that do not post all registered sex offenders on their public web site, fourteen (14) use risk assessments and restrict public Internet access to information about only those offenders determined to pose a risk of re-offending. (Norman-Eady, Sex Offender Registry, Sept. 2008, Doc. 2008-R-0500.) Other states post all offenders without regard to risk. Still others post offenders with designated offenses, much like California's current statute. Posting all offenders except those in the CASOMB's recommended[51] Tier 1 would ensure that posting on the Internet relates to risk of re-offense and dangerousness of the offender. The majority of registered sex offenders in California will fall into Tiers 2 and 3, including all offenders convicted of child molestation, so that for the duration of registration (20 years or more for child molesters), they will be posted with full address on the state's Internet web site, as they are under current law.

[51] See Appendix I

Supervised and Unsupervised Sex Offenders



It is a common misconception that all registered sex offenders are under some form of rigorous, formal supervision through either a state level, or local correctional agency. It is also commonly believed that such supervision continues for their entire lifetime term of registration. This is quite untrue and highlights the need for local law enforcement and specialized multi-agency teams (such as the state funded Sexual Assault Felony Enforcement (SAFE) teams) to continue to track and monitor registrants once their term of formal supervision concludes.

Statewide, at any given time, 70-75% of registrants are not under formal supervision. All types of formal supervision last for only a specified length of time, and then it is up to local jurisdictions to verify registration and pursue registration violation charges when the registrant fails to comply with the law.

Enforcement of sex offender registration laws by California law enforcement agencies varies and is often affected by personnel and resource limitations. Multi-agency teams such as SAFE teams are few, and recently what little funding has been available in the past has been cut. Local law enforcement agencies—which must directly answer to their residents' concerns about community safety—do not receive any type of additional funding to monitor sex offender registrants or enforce registration laws.

Survey of Law Enforcement Agencies

In February, 2009 CASOMB sent a survey regarding sex offender registration and enforcement to 428 law enforcement agencies in California. Included were agencies of all sizes, including campus police departments. The number of registrants within each jurisdiction ranged from none to over 5,200. Statistics requested included the number of registrants in each area, number of those under formal supervision, if the agency had investigators assigned to sex offender tracking and monitoring and if the agency participated in a multi-agency approach to monitoring registrants. Ninety-five agencies (22%) responded to the survey. The responses accounted for 26,014 total registrants. Agencies responding represented a geographic cross section of jurisdictions, including:

- Five large Sheriff's Departments and Police Departments (responsible for 2,000-5,200 registrants each)

- Thirteen agencies with mid-sized registrant populations (250-1400 registrants each)

• Seventy-seven agencies with small registrant populations (under 250 registrants), including seven college campuses

While all local jurisdictions (and college campuses that have a police department) are required to conduct sex offender registration, enforcement of registration law is not mandatory. Of the responding agencies:

• 67% of the agencies had investigators assigned to sex offender registrant tracking and monitoring; most included sworn officers as well as civilian personnel

• 63% of the agencies had filed criminal cases for failure to register in 2007

• 13% received funding allowing them to participate in a Sexual Assault Felony Enforcement (SAFE) task force

• 34% reported utilizing a multi-disciplinary team approach (local law enforcement, parole, probation, treatment providers, victim advocates) to monitoring sex offenders

Regarding address verifications of the whereabouts of registrants:

• 84% of responding agencies went to the registrants' residence locations in order to verify that the registrant actually lived there

• Of the agencies which do the in-person checks, 41% conducted those checks accompanied by parole agents or probation officers when applicable

Regarding public notifications on the presence of registered sex offenders in the community, 39% of responding agencies conducted proactive notifications and supplied information to the community above and beyond what already appears on the public website, www.meganslaw.ca.gov. Six of the agencies which conducted notifications held public meetings in 2007. Other agencies had conducted notifications by distributing flyers at schools or door-to-door, or at community events such as a Halloween event booth. One agency reported using a combination of notification to the media, flyers, and e-mails and notifications to subscribers via their own agency information web site.

Public notifications are often discussed among law enforcement officers who are tasked with registration and registration enforcement. Often cited, especially in areas that have a large number of registrants is "Where to start, and when to stop?" As the majority of offenders have not been administered a risk assessment, law enforcement must evaluate the offender's present risk of re-offending. In addition, the preparation that goes into a notification (including gathering documentation on a registrant's crimes, residence and employment areas, who the registrant is likely to encounter) takes a significant amount of investigative time by law enforcement officers who are already tasked with other duties. In many jurisdictions, law enforcement resources are pushed to the limit in keeping up with registration updates alone. Often, after a public

notification, the offender is likely to move, creating a new question of notification in a new location.

Allocation of Resources

Even though local law enforcement monitoring of sex registrants requires carving a program from existing resources, the necessity remains. In September, 2007, the International Association of Chiefs of Police identified desired objectives for sex offender monitoring which included:

- Registration
- Verify compliance
- Pursue cases of noncompliance
- Public notification and education

> Captain Terry, who heads the Sheriff's Department's investigative division, said Contra Costa County has about 1,700 registered sex offenders. His station is responsible for about 350, "349 more than the number of detectives I have dedicated to monitoring these people."
>
> Los Angeles Times
>
> (August 31, 2009)

Departments that have allocated resources to sex offender registration, monitoring and tracking have included the Los Angeles Police Department, which currently fields seven investigative teams to monitor the city's 5,200 registrants. In addition to managing registration and enforcing registration laws, the agency handles enforcement of DNA collection from all sex offender registrants. This effort recently resulted in the identification of a registrant linked to a series of sexual assaults and homicides.

Without local law enforcement's active pursuit of registration compliance and verification of information supplied by registrants, the information that the public sees on the Megan's Law web site is inaccurate. Yet, given the huge number of California registrants and limited resources available, the task is overwhelming. At any given time, thousands of registrants are in violation of registration laws[52].

[52] For a county by county list of registration violations see **APPENDIX**

Special Populations

Of the various special population subgroups among California's sex offenders, this report focused its attention on those involved in the state's civil commitment program - sometimes called the sexual violent predator (SVP) program. Less than two percent of the sex offender registrants in California are either presently subject to civil commitment,

SPECIAL POPULATIONS RECOMMENDATIONS

- California should investigate methods of increasing available treatment hours and participation rates for those sex offenders who are committed or detained as inpatients within the Department of Mental Health.
- California should identify a more efficient screening process for determining when parole violations are related to reoffense risk and should be clinically re-evaluated versus parole violations *not* related to risk that should not require an additional costly evaluation for parolees who have been previously evaluated for the Sexually Violent Predator Program.

or have civil commitment proceedings pending against them. However, significant portions of the limited resources devoted to the management of sex offenders in California. Registrants are allocated to civil commitment proceedings and the treatment of civil committees in this "special population."

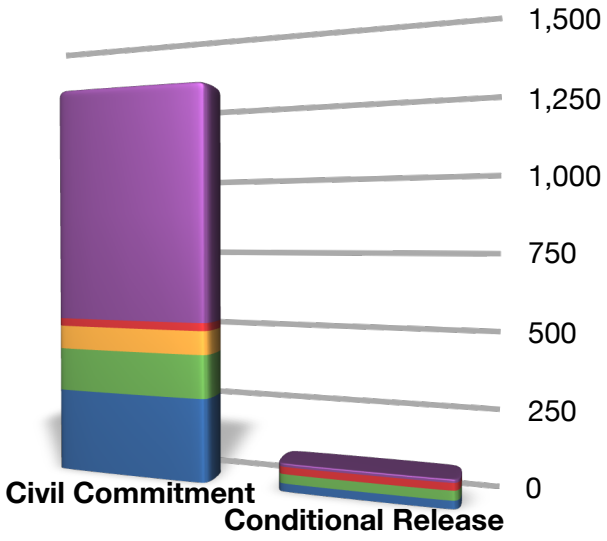
Approximately, 1,300 sex offender registrants are committed or detained as inpatients within the Department of Mental Health,[53] and 85 are on conditional release in the community under supervision.[54] Over 60% of the inpatient population is at Coalinga State Hospital pursuant to the Sexually Violent Predator commitment program at a cost of approximately $170,000 per year per patient. The remaining 40% are subject to commitment at Atascadero, Metropolitan, Napa and Patton State Hospitals at a cost of approximately $130,000 per year per patient; 21% are committed as Mentally Disordered Offenders (MDO), 11% are committed as Not Guilty by Reason of Insanity (NGI), 6% are committed as Incompetent to Stand Trial and 2% are committed as Mentally Disordered Sex Offenders (MDSO). Of the sex offender registrants within

[53] As of 9/2009

[54] As of July 25, 2009

conditional release programs, 35% are committed as NGI, 30% MDO, 27% MDSO and 13% SVP.

The most significant policy change in recent years affecting the management of this special population was Jessica's Law (Proposition 83), enacted in November of 2006. Proposition 83 significantly expanded the registrant population potentially subject to civil commitment under the SVP Act. It increased the number of penal code violations that can qualify a registrant for possible SVP civil commitment, decreased the minimum number of victims from two to one, and perpetuated the indeterminate term of commitment, enacted by SB 1128 on September 20, 2006.[55]



With the enactment of Proposition 83, the number of registrants referred by CDCR to DMH for processing for possible SVP commitment increased 1254%, from 48 on average per month, to 650 per month.[56] Prior to Jessica's Law, 48% of the cases referred by CDCR monthly required clinical evaluations to be conducted by DMH (23 per month). After the passage of Proposition 83, only 24% of the cases referred by CDCR required clinical evaluations, but because of the drastic increase in the overall total number of cases referred, there was a 465% increase in the number of cases for which clinical evaluations needed to be conducted (from 23 per month on average, to 156 per month).

Each person clinically evaluated by DMH costs a minimum of $7,000, plus travel expenses for the evaluators, and up to $14,000, plus expenses.[57] With the number of Pen. Code, § 290 registrants being clinically evaluated for possible SVP commitment by DMH increasing from 23 per month on average to 153 per month, the average cost of clinical evaluations alone increased from $161,000 to at least $1,071,000 monthly.

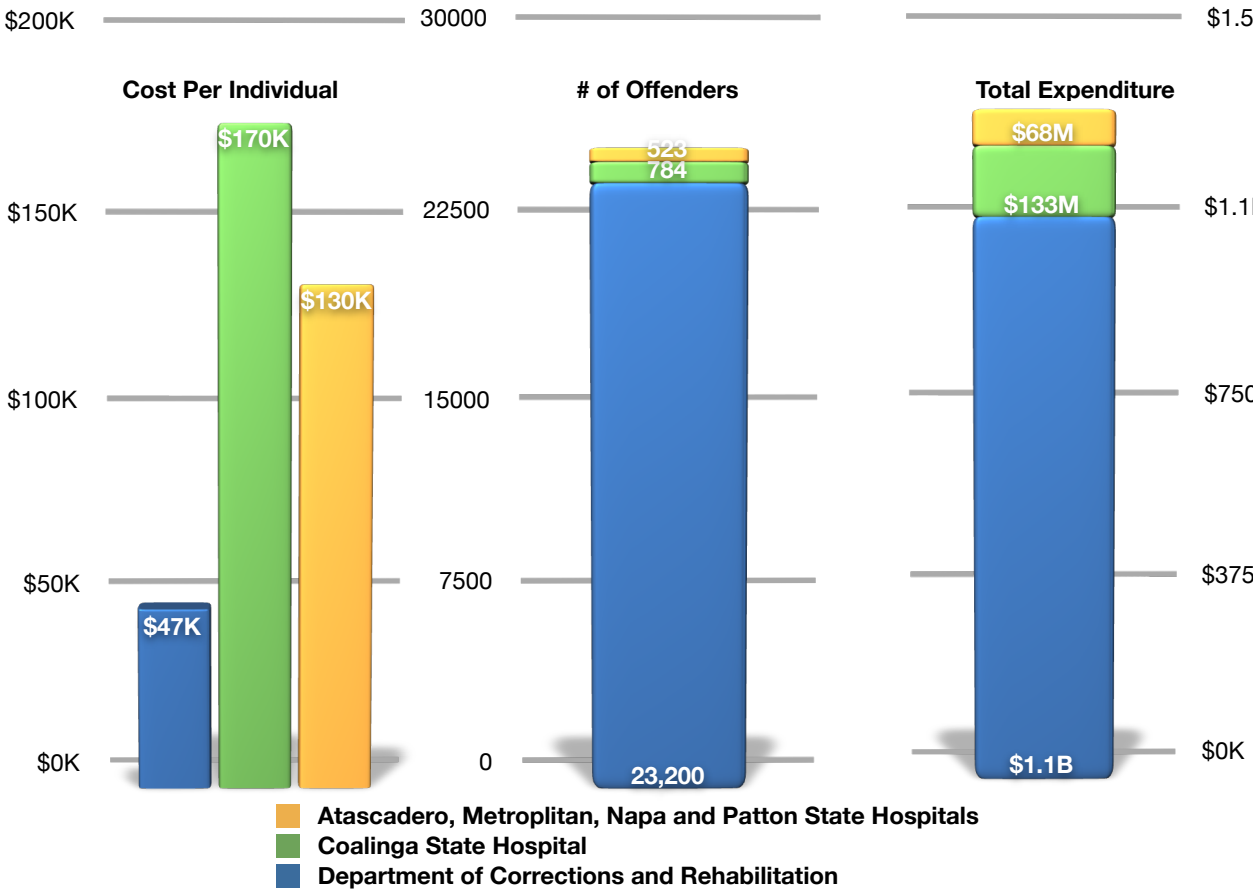
---

[55] Prior to SB 1128, an SVP commitment was for two years.

[56] January 1999 to October 2006, as opposed to November 2006 to June of 2009.

[57] Welfare & Institutions Code Section 6601(e), if first two evaluators split, two additional evaluations must be conducted.

Prior to Proposition 83, 35% (8 per month) of the cases for which clinical evaluations were conducted resulted in a positive finding by DMH.[58] By expanding the potential reach of the SVP commitment process, rather than clinically evaluating 15 persons per month, DMH was required to clinically evaluate 142 persons per month. However, after the implementation of Proposition 83, only 7% (11) of the cases for which clinical evaluations were conducted resulted in a "positive finding" by DMH. Between January, 1999, and October, 2006, 7 petitions for commitment under the SVP Act were filed monthly; between November 2006 and June of 2009, 10 petitions for SVP commitment were filed on average per month. Two years and eight months into the implementation of Proposition 83, the number of persons committed on average dropped from approximately 4 per month, to 3 per month. [59]



Essentially by increasing the qualifying convictions for SVP commitment and decreasing the minimum number of victims from two to one, Proposition 83 shifted the winnowing process from the record review stage to the much more costly, clinical evaluation stage. The record review burden upon CDCR and DMH increased drastically following

[58] A "positive finding" means that DMH may refer to a District Attorney for possible filing of a SVP commitment petition.

[59] May reflect two year term of commitment being changed to an indeterminate term, to some degree.

Proposition 83,[60] but far more significant was the increase in the number of persons clinically evaluated, with very little increase in potential committees. The number of people clinically evaluated per month that resulted in negative findings, went from 15 per month to 142 per month on average.

In addition to the significant increase in the number of *initial* SVP screenings there has also been a significant increase in the number of individuals who, after being initially assessed and determined to *not* meet the criteria for SVP, are 're-screened' due to a subsequent parole violation - *whether or not there is any reasons to believe hat the new violation actually contributes to that offender's risk to re-offend*. In order to reduce repetitive, unnecessary re-evaluations and focus resources on evaluating violation behavior related to risk, the Department of Mental Health, the Department of Corrections and Board of Parole Hearings (through the "Three Agency Meeting process) should identify a screening criteria that prioritizes risk-related violations.

It can fairly be inferred that the two victim requirement prior to Proposition 83 correlated with the duration of behavior over at least 6 months, required for purposes of substantiating the requisite paraphillic diagnosis under the SVP Act.

The Sexually Violent Predator Act dictates that DMH has an affirmative obligation to treat the SVP population and to try to obtain the cooperation of the patients in the treatment program. [61] The Sex Offender Commitment Program (SOCP) is a five Phase treatment program. The first four phases are conducted on an inpatient basis at Coalinga State Hospital. Phase 5 is a conditional release program in the community.

In January of 2009, approximately 24% of the patients were participating in the SOCP. As of August 2009, of the 791 patients either committed[62] or detained pending commitment,[63] 211 patients were in Phase II, 30 in Phase III and 4 in Phase IV. Eleven patients were under conditional release supervision,[64] and five were awaiting placement in conditional release. Since its inception in 1996, only 18 patients have completed Phase IV, and only 2 of those have completed Phase V.

On August 31, 2009, an anonymous, voluntary survey of CSH patients was conducted. Two hundred and six patients participated, of whom 40% were presently in treatment, 10% had previously been in treatment and 50% had never been in treatment. The thrust of the survey was an inquiry as to what it would take to get more patients to participate in treatment and how the treatment program could be improved. The most common response recommended that the program incorporate a definitive time frame so as to establish a viable exit strategy. Another common recommendation was to

---

[60] CDCR monthly referrals to DMH went from 48 to 650 per month.

[61] Welfare & Institutions Code Section 6606.

[62] Welfare & Institutions Code Section 6604.

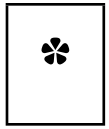
[63] Welfare & Institutions Code Section 6602.

[64] As of August 2009.

increase the hours of treatment per week, from the present 3 hours. Respondents indicated that such an increase would give them increased hope of being able to complete the program and thus increase their motivation to participate.

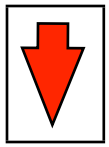
Summary Gaps from Previous CASOMB Publications

Key:



Item has remained essentially unchanged

there have been improvements in practice, capacity or statute



there have been reductions in capacity or funding

Item	What Report	Status
Investigation, Prosecution Disposition		
A large number of the counties fail to keep the adequate data to allow the evaluation of prosecution practices, particularly in the case of juvenile offenses.	CASOM 2007	✤
Prosecutors handling sexual assault cases do not routinely receive specialized training	CASOM 2007 CASOMB 2008	✤
In the prosecution of both adult and juvenile offenders there is a failure to consult with victims prior to finalizing plea agreements, and a failure to seek and obtain protective orders regarding sensitive materials.	CASOM 2007	✤

Summary Gaps from Previous CASOMB Publications

The failure to have guidelines in place that assist in determining the appropriate plea may lead to inconsistent treatment and sentencing of offenders.	CASOM 2007	✤
Sex offense specific psychological evaluations that can be used to identify relevant risk factors are not generally used to assist in sentencing decisions.	CASOM 2007	✤
Training programs designed to educate judges on how to enhance sex offender management are not widely available.	CASOM 2007	✤
Sex offense specific psychological assessment tools are not generally used in sentencing decisions.	CASOM 2007	✤
Specialized Units are not available in all counties	CASOMB 2008	
Only a small number of communities that have developed collaborative teams, such as SARTs, MDICs, FJCs and SAFE Task Forces.	CASOMB 2008	✤
Lack of Funding for Vertical Prosecution and Specialized Units.	CASOMB 2008 CASOMB 2009	
ASSESSMENT		
There is no protocol for institutional staff at either the state or county level to conduct a risk assessment during intake, or prior to release to the community.	CASOM 2007	
Institutional staff at the state level have not been trained to conduct sex offender risk assessments.	CASOM 2007	

Summary Gaps from Previous CASOMB Publications

70% of surveyed counties responded that they did not use empirically validated actuarial tools to conduct risk assessments.	CASOM 2007	
There is no validated risk assessment instrument for use with female offenders.	CASOM 2007	
Very few counties have training and/or experience requirements in place to conduct risk assessments.	CASOM 2007	
There are very few protocols in place at either the state or county level for conducting risk assessments for juvenile sex offenders prior to their release into the community.	CASOM 2007	
Almost no counties are conducting risk assessments with juvenile offenders. Outpatient providers are more likely to use a risk assessment as part of their assessment protocol, but there is no identified standard risk assessment tool.	CASOM 2007	
In most of the counties surveyed, policies or standards do not require the incorporation of a sex offender-specific or psychosexual evaluation that is incorporated into the PSI report.	CASOM 2007	
In most of the counties surveyed, disposition recommendations in PSI reports do not address family reunification issues.	CASOM 2007	
Formal risk assessments are conducted less then 50% of the time during the PSI Report, during classification, and during re-entry.	CASOM 2007	
PSI reports are infrequently shared with or provided to victim advocates in cases where victims are actively involved in the sex offender management process.	CASOM 2007	
In only 50% of the counties surveyed do community supervision officers assess the dynamic risk factors and ongoing criminogenic factors.	CASOM 2007	

Summary Gaps from Previous CASOMB Publications

Adult and juvenile re-entry plans are not currently in place for sex offenders at the county level.	CASOM 2007	✤
Adult sex offenders in the CDCR do not receive a sex offender specific clinical assessment during intake/classification.	CASOM 2007	✤
Most adult sex offenders do not receive a sex offender specific clinical assessment/evaluation during their period of incarceration.	CASOM 2007	✤
The CDCR does not utilize any psychophysiological instruments in their adult institutions.	CASOM 2007	✤
Most adult offenders do not receive a sex offender-specific evaluation prior to their placement in community-based sex offender treatment programs.	CASOM 2007	✤
Most of the surveyed counties do not utilize any tool to assess for the presence of (and changes in) offender risk or criminogenic factors.	CASOM 2007	✤
Although some counties assess for changes in risk, this information is rarely shared with other representatives of the supervision system.	CASOM 2007	✤
TREATMENT		
Assessment components are not uniformly defined across programs.	CASOM 2007	✤
Not all programs use the same assessment or data collection procedures. Programs are also not evaluated.	CASOM 2007 CASOMB 2008	✤

Summary Gaps from Previous CASOMB Publications

Few programs use polygraphy in the course of treatment and supervision, indicating a weakened application of the containment model.	CASOM 2007 CASOMB 2008	✤
Program completion rates vary widely from program to program.	CASOM 2007	✤
Most counties do not have sex offender treatment programming available for sex offenders who are in custody, i.e. juvenile hall.	CASOM 2007	✤
Documentation practices are inconsistent from program to program and may not meet federal HIPAA requirements.	CASOM 2007	✤
Not all programs have structures in place to ensure that collaboration occurs between treatment providers and probation officers.	CASOM 2007	✤
Victim advocates are conspicuously absent from the list of collaborators in sex offender management teams.	CASOM 2007	✤
Community stakeholders, including law enforcement and victim advocacy organizations are not sufficiently informed about the nature, quality and existence of sex offender treatment resources in the community.	CASOM 2007	✤
California does not have a sex offender treatment provider or program certification process.	CASOM 2007 CASOMB 2008	✤
Many counties either do not have known treatment providers who are members of the professional associations that focus on sex offender treatment and management, or do not have enough treatment providers to treat those who are on probation.	CASOMB 2008	✤

Summary Gaps from Previous CASOMB Publications

No sex offender treatment is available for the over 23,000 sex offenders incarcerated in CDCR institutions. California is one of few states that does not provide any sex offender treatment in prison.	CASOMB 2008	✤
REENTRY / SUPERVISION		
Sex offender specific treatment is not being provided to adult sex offenders held at either the state or county level.	CASOM 2007	
Discretionary release is not an available option for adult sex offenders held by the state.	CASOM 2007	✤
Pre-release plans are not prepared for adult sex offenders by either the state or the county.	CASOM 2007 HRSO 2006	
Supervision officers are rarely involved in release planning for adult sex offenders at both the state and county level.	CASOM 2007 HRSO 2006	
Half of counties surveyed do not review sex offender registration and community notification requirements with adult sex offenders prior to release.	CASOM 2007	✤
On both the state and local level there are no policies and practices for identifying suitable housing for adult sex offenders.	CASOM 2007	
Transitional housing services are not available upon release from state or local institutions.	CASOM 2007 CASOMB 2008	

Summary Gaps from Previous CASOMB Publications

No funds are appropriated for adult sex offender housing on the state level.	CASOM 2007	
Most counties do not have supervision officers maintain contact with the employers of adult sex offenders.	CASOM 2007	
Most of the counties releasing adult sex offenders do not have a process in place to provide them with identification prior to release.	CASOM 2007	✤
On the local level there is almost no funding, with the exception of one county, to meet the housing needs of indigent adult offenders.	CASOM 2007	
Specialized supervision strategies such as the polygraph are seldom used in the supervision of sex offenders.	CASOM 2007 CASOMB 2008	
The use of multidisciplinary sex offender management teams is not common practice for the supervision of either adult or juvenile sex offenders.	CASOM 2007	✤
There is an absence of specialized case loads for supervision of both adult and juvenile sex offenders at the county level.	CASOM 2007, CASOMB 2008	
On both the state and local levels there is a dearth of policies and practices that involve community support networks in the adult sex offender reentry process.	CASOM 2007	
Training in utilization of GPS and enforcement of residency restrictions has replaced specialized sex offender management training.	CASOMB 2008	

Summary Gaps from Previous CASOMB Publications

Each county probation department appears to have different resources and methods for supervising sex offenders. One uniform model throughout the state would be the most evidence-based method of ensuring that the containment model was practiced in a consistent manner	CASOMB 2008	✤
Offenders registering as “transient” may have other options then being homeless. The offender may stay sporadically in an exclusion zone while on transient status, performing functions normally associated with a residence. The law limits “where they live”, not “where they go.”	CASOMB 2008	✤
The number of affected sex offenders statewide, and parolees in particular who declared themselves as transient since the implementation of Jessica’s Law has increased dramatically	CASOMB 2008	
The effect of residency restrictions on probationers is unknown, due to lack of implementation and no central data collection process.	CASOMB 2008	✤
Jessica’s Law does not identify who is responsible for enforcing residency restrictions after the sex offender is released from probation or parole, and provides no funding for it.	CASOMB 2008	✤
Proposition 83 does not impose a penalty for violators of residency restrictions who have been released from probation or parole.	CASOMB 2008	✤
VICTIMS		
A significant number counties do not inform victims of either adult and juvenile sex offenders as to when the offender is released from county institutions.	CASOM 2007	✤
Most counties do not provide referrals for services to family members and victims if the offense occurred within the home.	CASOM 2007	✤
Lack of a statewide strategic plan for victim assistance resulting in inadequate planning for victim services and fragmented funding.	CASOMB 2008	✤

Summary Gaps from Previous CASOMB Publications

Lack of funding for a victim advocate as part of Vertical Prosecution team.	CASOMB 2008	✤
Lack of coordination among government agencies resulting in conflicting and duplicative policies.	CASOMB 2008	✤
Lack of communication with and among service providers on significant policy issues	CASOMB 2008	✤
Uncertainty in funding from year-to-year.	CASOMB 2008	
COMMUNITY EDUCATION		
Currently there is no public education and outreach work going on to prepare communities for the return of sex offenders after their period of incarceration.	CASOM 2007	✤
The Megan's Law web site is available to educate the public about sex offender recidivism, including statistics on age/gender, but is underutilized for this purpose. The web site should be utilized as an educational tool and the educational materials should be required reading for the public before allowing them to enter the search screens.	CASOM 2007	✤
The registration law is not easily understood by the public or translated into common language.	CASOM 2007	✤
REGISTRATION / NOTIFICATION		
Length of registration period is not currently linked to individual risk assessment, only to the type of offense (Under current California law, length of registration is life for all offenses without regard to an offender's assessed risk. About 20% of registrants are eligible, based on their convicted sex offense, to apply for a certificate of rehabilitation).	CASOM 2007	✤

Summary Gaps from Previous CASOMB Publications

Registration for consensual sex offenses where there is less than a 10-year age difference between offender and victim is currently not tied to whether or not the court finds that the offender poses a risk of re-offending or is sexually dangerous. Courts need discretion to impose less-than-lifetime registration terms in these cases.	CASOM 2007	✤
Although the Adam Walsh Act requires registration for kidnapping of children (non-parental) without required findings of sexual intent, this is not required by current California law.	CASOM 2007	✤
The risk assessment which determines whether the registrant poses a risk of recidivism is not used to determine the duration of the duty to register.	CASOM 2007	✤
The statute does not provide a court hearing regarding whether registration should continue after 10-20 years for offenders with low risk assessment scores.	CASOM 2007	✤
Driver's licenses suspension and other relevant restrictions are not currently implemented in response to noncompliant registrants.	CASOM 2007	✤
Current California law requires the prosecution to prove a willful violation of the registration laws, which entails proving the offender had actual knowledge of the provision of the registration law he violated. The statute should be changed to provide that an offender who is notified of his registration duty and fails to comply is held accountable.	CASOM 2007	✤
The goal of investigations of registrants who fail to register should be to arrest violators.	CASOM 2007	✤
Extending the registration period (by lengthening the waiting period for a certificate of rehabilitation) by 3-5 years is not currently required for each conviction for violation of the registration laws.	CASOM 2007	✤

Summary Gaps from Previous CASOMB Publications

There is no state mandate for establishing regional sex offender management teams that work closely together on the management of specific cases under community supervision. (Current California law provides limiting funding, on a grant basis, for SAFE teams, but such teams are not mandatory. Ongoing funding is necessary for such teams to function effectively.)	CASOM 2007	✤
There is no mandated training for law enforcement, District Attorneys or judges on registration and community notification laws; such training should be mandatory and the law should require Peace Officers Standards Training (POST) reimbursement for such training.	CASOM 2007	✤
Currently there is no required time line for entry of registration data by local law enforcement into sex offender registration database (e.g., 3 days).	CASOM 2007	✤
Current California law requires the courts, DOJ, and district attorneys to retain files on registered sex offenders, but does not require law enforcement, probation or parole to maintain sex offender registration records, leading to problems in obtaining documents vital to proving knowledge of the duty to register (and obtaining convictions for violations of the registration laws).	CASOM 2007	✤
There is no law requiring law enforcement agencies to verify the offender's registered address, utilizing field compliance and mail-in verifications on an ongoing basis.	CASOM 2007	✤
Courts which reverse, vacate or dismiss a sex offense conviction are not required to notify the DOJ Sex Offender Tracking Program in writing. The only notification goes to DOJ's Automated Criminal History System (these two software systems have no interface, so reversals may not be communicated to the sex offender registration database).	CASOM 2007	✤
There is no system which enables local law enforcement to coordinate monitoring registrants with parole/probation.	CASOM 2007	
There is no law requiring or encouraging vertical prosecution or the use of Penal Code section 290 prosecution teams in District Attorney's offices for prosecution of misdemeanor or felony 290 cases.	CASOM 2007	✤

Summary Gaps from Previous CASOMB Publications

The law authorizing active and passive notification does not require consideration of the offender's assessed risk level to determine the appropriateness and scope of notification.	CASOM 2007 CASOMB 2008	✤
No state law provides for a court hearing, upon registrant request, to determine whether the risk posed to public safety by the registrant should continue to require Internet posting after 10-25 years. Current California law permitting exclusion from the Megan's Law Internet web site is very limited; it permits exclusion from the Internet for persons convicted of felony sexual battery, misdemeanor child molestation, and certain incest offenses against a child which did not involve penetration/oral copulation, without regard to length of time since release or the assessed sex offender's risk of recidivism (Pen. Code, § 290.46, subd. (e)]. Additionally, 20% of California registered sex offenders are not posted on the Internet web site, because the Legislature deemed the offenses not serious enough to be so disclosed—without regard to the assessed risk of the individual offender.	CASOM 2007	✤
Current California law does not require notification of a victim [who could be authorized by statute to elect such notification] before a local registering law enforcement agency actively discloses information about a sex offender to the community.	CASOM 2007	✤
Although it is mandated that an individual risk assessment be completed by parole, probation and possibly local law enforcement agencies (the law is unclear on who will assess registrants no longer on supervision), no direct oversight for quality review of the agencies performing the risk assessments has been established.	CASOM 2007	✤
No law authorizes offenders to request re-assessment of risk after specified time periods (e.g., once every 5-10 years).	CASOM 2007	✤
There is no current requirement for counties to establish collaborative teams and allocate funding for actively monitoring registrants and reviewing community notification decisions. Laws should require including law enforcement, parole, probation, DA's offices, DOJ SPAT teams, treatment providers, and victim advocates on such teams.	CASOM 2007	✤
There is no established state curriculum for community meetings which could be used in conjunction with active notification about registered sex offenders.	CASOM 2007	✤

Summary Gaps from Previous CASOMB Publications

There is no required time line for entry of registration data by local law enforcement into the state's sex offender registration database.	CASOMB 2008	✤
There is no law requiring law enforcement agencies to verify the offender's registered address, either by utilizing field compliance and/**or** mail-in verifications on an ongoing basis. Law enforcement agencies that currently have registration verification and enforcement teams are generally unfunded and are pulled together from existing, limited resources.	CASOMB 2008	✤
NUMBERS		
No entity in California – whether state agency, academic institution or other – has assumed or been appointed to provide leadership responsibility for conducting key research on topics related to the management of the state's sex offenders. California has consistently been a "consumer" of policy research and other research materials produced elsewhere, frequently by much smaller states, agencies, and/or foreign countries.		✤
CDCR does not have a system of electronic record keeping (case files) for those under its authority and so is unable to provide much flexibility in assembling new sets of data or retrieving information from older records.		▲
Data collection regarding sex offenders on county probation varies considerably from county to county. Consistency is needed to allow the information to be gathered and analyzed at a statewide level. Some counties have been unable to provide data needed even for the basic overview provided in this section of the Report.		✤

Summary Gaps from Previous CASOMB Publications

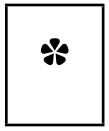
The "metrics" used to classify sex offenders, sex offenses, recidivism and similar important dimensions are not consistent across systems, making it hard to reach and state clear conclusions.		✤
RECIDIVISM		
There is no broadly researched and replicated body of data about the recidivism of California sex offenders that would provide baseline measures to guide policy and evaluate the success of any new efforts to reduce recidivism		✤
No information is available at this time regarding sexual recidivism for sex offenders on probation in California.		✤
Policy makers have insufficient resources for obtaining reliable information about recidivism nor do they have ready access to expert assistance in interpreting the complex recidivism data available from multiple sources.		✤
The operational definition of "sex offender recidivism" used in any future California recidivism studies needs to be standardized to improve the accuracy and comparability of the data.		✤
Little is known about the extent to which recidivism rates climb after the period of formal supervision and control under the authority of the criminal justice system (parole and probation) ends and sex offenders are simply living in the community as "free" citizens. Research about postsupervision recidivism should be undertaken.		✤
SPECIAL POPULATIONS		

Summary Gaps from Previous CASOMB Publications

The state hospitals provide the Sex Offender Commitment Program to all sex offenders but only 20-30% participate in this treatment program. Many more offenders participate in general treatment groups and vocational offerings.		✤

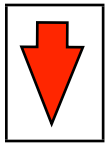
Summary Recommendations from Previous CASOMB Reports

Key:



Item has remained essentially unchanged

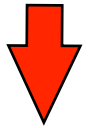
there have been improvements in practice, capacity or statute



there have been reductions in capacity or funding

Recommendation	Report	Status
The State of California should have a uniform definition for an HRSO as follows: An HRSO is a convicted sex offender who has been deemed by the CDCR to pose a higher risk to commit a new sex offense in the community. A PC 290 parolee will be designated as an HRSO for purposes of adult parole based on the score from a validated risk assessment tool(s), and/or the known criminal history, and/or other relevant criteria established by the CDCR.	HRSO I	
All California adult PC 290 sex offender registrants under the jurisdiction of the CDCR must be assessed to determine whether based on validated risk assessment tool(s) and/or known criminal history,and/or other relevant criteria, they should be designated as HRSOs. The assessment shall take place as soon as practical, but no later than 120 days prior to release on parole with continued assessments while on parole.	HRSO I CASOM 2007	✽
All California inmates required to register as sex offenders that are designated as HRSOs should be required to receive appropriate specialized sex offender treatment as warranted while incarcerated.	HRSO I	✽

Summary Recommendations from Previous CASOMB Reports

Notification of Release of HRSOs• The Task Force recommends that CDCR be required to notify victims 90 days prior to the anticipated release of an HRSO in relation toPC 3003(c). Victims should have a minimum of 21 days to challenge the HRSO residential placement in accordance with established CDCR procedures.• The CDCR should be required to provide notice of the release and recommended placement ofHRSOs at least 60 days before release using mail service as required by law and an additional reliable method such as email, fax, or telephone to a list of designated law enforcement recipients.• Local law enforcement should be required to provide timely and sufficient notice to the receiving communities of the residential placement of HRSOs.	HRSO I	
The parole supervision of HRSOs should follow the“Containment Model,” which recognizes the risk that sex offenders pose to the community, and thus provides a focus on “containing” offenders in a tight supervision and treatment network with active monitoring and enforcement of rules. This‘Containment Model’ is formed by four components:The supervision components led by the specialized parole agent and his team; the treatment component directed by a qualified therapist who uses an evidence-based approach in conformity with recognized guidelines and standards; the polygraph component to be performed by qualified postconviction polygrapher(s); and the victim advocacy component focused on what is best for the victim.In addition, all HRSOs should be placed on GPS monitoring (the Task Force recognized the value of more intensive supervision and GPS monitoring for all paroled sex offenders, but acknowledge that it is beyond the scope of the Executive Order).	HRSO I Progress Report 2009 CASOMB 2008	
The CDCR and local law enforcement should partner to create a viable program for community education and communication specific to HRSO issues.	HRSO I	✽
The Task Force recommends legislative changes to the Megan’s Law Website to specifically identify HRSOs who are on parole and those that are being monitored by GPS.	HRSO I	
The CDCR should be required to assess the fiscal and programmatic impact of the Task Force recommendations within 90 days and work with theAdministration and the Legislature to secure funding and/or legislative changes in order to implement recommendations. In the event the CDCR cannot meet the timeframe on any recommendation,a public letter should be sent to the Governor explaining the reasons why the Department cannot comply with the recommendations.	HRSO I	

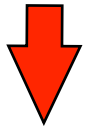
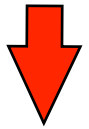
Summary Recommendations from Previous CASOMB Reports

The CDCR should be required to establish a permanent Sex Offender Management Board that will review practices of the CDCR regarding the stated goals of the California High Risk Sex Offender TaskForce. Stakeholders such as sheriffs and police chiefs,district attorneys, county probation chiefs and line parole officers should have permanent positions on this Board.	HRSO I	
The CDCR should be required to continue working with local law enforcement and local government to find appropriate and equitable housing solutions for placement of HRSOs. The Task Force recommends that a committee of appropriate stakeholders, such as this Task Force, continue to convene to address these critical issues.	HRSO I	✽
INVESTIGATION PROSECUTION DISPOSITION		
Specialized training should be provided to all individuals responsible for the investigation, prosecution and disposition of sexual offenses with a particular focus on cultural differences, and differences between adult and juveniles, both as victims and as offenders.	CASOM 2007 Progress Report 2009	✽
All sexual assault cases, adult and juvenile, should be handled by specially trained prosecutors assigned to a vertical prosecution unit.	CASOM 2007 Progress Report 2009	✽
Every jurisdiction should have a Multidisciplinary Team (MDT) to facilitate the investigation and prosecution of sexual offenses.	CASOM 2007 Progress Report 2009	✽
Statewide protocols should be developed for the investigation of sexual offenses, including protocols for the collection, packaging and preservation of evidence.	CASOM 2007	✽
California should establish filing guidelines that ensure consistency and integrity in filing decisions and, wherever possible, designate one experienced prosecutor to make filing decisions.	CASOM 2007	✽
California should establish guidelines to ensure consistency in plea bargains and dispositions.	CASOM 2007	✽

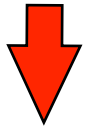
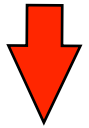
Summary Recommendations from Previous CASOMB Reports

Judicial officers need access to training on sentencing alternatives that enhance sex offender management to ensure that they understand the dynamics of sexual offenses, the heterogeneity of the sexual offender population, research on recidivism and the impact of offenses on victims. The training should be multi-disciplinary and involve a collaboration between the Center for Judicial Education and Research and the National Center for Sex Offender Management.	CASOM 2007	✽
Investigation and prosecution of sexual offenses should consider the needs of victims including such issues as fair access to the judicial process, early notification regarding victim rights, assignment of a victim advocate, protection of sensitive information, and communication with victims at all stages regarding the progress of the investigation, prosecution and disposition	CASOM 2007	✽
District attorney offices, in collaboration with law enforcement, should prepare and distribute a brochure to inform the sexual assault victim of his/her rights, and compile a checklist of the steps that can be taken to protect those rights. These brochures should also be distributed by victim advocate organizations and medical providers.	CASOM 2007	
TREATMENT / ASSESSMENT		
Written policies should be developed for the assessment of sex offenders including specific guidelines regarding the components of the assessment as well as policies regarding the frequency and timing of such assessments during investigation, incarceration and the period of community supervision.	CASOM 2007	✽
Appropriate and evidence based treatment should be routinely offered to all adult and juvenile sex offenders in California. There should be a continuum of care that guarantees availability of appropriate treatment at all stages of the criminal justice process through arrest, incarceration, community supervision, and beyond.	CASOM 2007	
Written policies should be developed for the treatment of sex offenders including specific guidelines regarding appropriate treatment protocols that follow evidence-based standards of care and implementation of the containment model.	CASOM 2007	✽

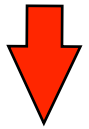
Summary Recommendations from Previous CASOMB Reports

Written policies should be developed regarding the minimum qualifications, experience and certification of professionals authorized to conduct the treatment of sex offenders in California.	CASOM 2007	✽
Further research is needed to ascertain the availability of qualified offender-specific treatment providers in California. This is necessary to ensure development of sufficient numbers of qualified treatment providers and programs throughout California.	CASOM 2007	✽
In regions where there are currently inadequate or limited resources for the treatment of sex offenders, available treatment should be targeted towards the highest risk sex offenders.	CASOM 2007	✽
California should maintain a data base to monitor treatment outcomes and rates of sexual and general recidivism of sex offenders who complete treatment programs.	CASOM 2007	✽
There should be adequate funding to ensure that all sex offenders in California have the option of receiving appropriate sex offender treatment	CASOM 2007	
Policies should be developed regarding in-custody segregation and therapeutic communities. Treatment should be provided in environments that assure physical and emotional safety, whether in institutional or community based settings.	CASOM 2007	✽
REENTRY		
Case management plans based on a comprehensive needs assessment should be developed early in the confinement period focusing on treatment, with the specific objective of preparing the offender for release and addressing those issues that research has demonstrated to be associated with future criminal behavior.	CASOM 2007	✽
Policies should be developed regarding the need for a written re-entry plan that is based on clinical assessment, response to treatment and institutional services, and includes input from the community supervision officer. This collaboratively developed plan should be finalized at least 6 months prior to release and should explicitly address housing and other community stabilization needs, as well as victim issues, including procedures that enable victims to exercise their rights around placement	CASOM 2007	

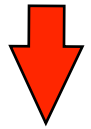
Summary Recommendations from Previous CASOMB Reports

The written re-entry plan should follow the sex offender through the different phases of the period of confinement and at the time of release into the community so as to facilitate continuity of care and enhanced public safety.	CASOM 2007	✽
Every community has an obligation to identify permanent, stable housing for sex offenders, to facilitate reintegration and reduce the likelihood of recidivism.	CASOM 2007	
The California Sex Offender Management Board recommends that the California State Legislature, Governor, and local governments reconsider residency restrictions to create an offender housing and supervision solution that balances three essential concerns: **Public safety** – Community sex offender management strategies should promote proven public safety strategies. Residency restrictions that preclude or eliminate appropriate offender housing can threaten public safety instead of enhancing it. **Fair Share** - Offender populations should, as dictated by statute, return to their county of conviction. No jurisdiction, county or city, should be forced to accommodate a significantly disproportionate number of offenders due to the residency restrictions in adjoining jurisdictions. **Local Control** - local governments, in collaboration with state agencies, should collaboratively identify not only areas where offenders should not reside or loiter but also a sufficient number of areas that are suitable and appropriate for offenders to live.		
PUBLIC EDUCATION		
public education and outreach campaign should be implemented to educate and prepare communities for the return of sex offenders following incarceration.	CASOM 2007	✽
SUPERVISION		
Effective, written evidence-based practice parameters should be developed to guide the community supervision of sex offenders in California.	CASOM 2007	✽

Summary Recommendations from Previous CASOMB Reports

Community supervision policies should adopt a containment model that also incorporates a collaborative team-based approach.	CASOM 2007	
Case loads for community supervision should be specialized and adopt recognized guidelines regarding the maximum number of cases that can be effectively supervised by one individual.	CASOM 2007	
Intensity of community supervision and allocation of resources should be guided by the sex offender risk assessment and specific needs of the individual offender.	CASOM 2007	
REGISTRATION / COMMUNITY NOTIFICATION		
Low to moderate risk sex offenders should be provided with the opportunity to petition for a hearing, after 10 years of compliance with the registration law, for termination of the duty to register. At the hearing, the sex offender should be required to show by a preponderance of evidence that he or she is not likely to pose a threat to public safety and has not been convicted of a new sex offense. Courts should be given discretion to reduce lifetime registration requirements in certain cases based on the lower assessed risk of individual sex offenders.	CASOM 2007	✽
California should mandate ongoing state funding for multidisciplinary regional sex offender management teams, including for enforcement and compliance work by those teams, and provide ongoing state funding to establish mandated training for such multidisciplinary sex offender management team members. California should also require Peace Officer Standards and Training (POST) reimbursement for such training.	CASOM 2007	✽

Summary Recommendations from Previous CASOMB Reports

Law enforcement agencies should be required to consider, as one factor, the sex offender's risk assessment score or scores to determine the appropriateness and scope of notification.	CASOM 2007	

92

Appendices

APPENDIX A—ADDITIONAL RIGHTS FOR SEXUAL ASSAULT VICTIMS

- Evidence Code section 352.1—Exclusion of rape victim's address and telephone number.
- Evidence Code section 782—Procedure to determine relevance of sexual conduct evidence proposed to attack credibility of complaining witness.
- Health & Safety Code section 1491—Examinations without charge, testing for venereal disease and pregnancy.
- Health & Safety Code section 1492—Indemnification of Victims; Information; Victim Compensation Claim Forms
- Penal Code section 264.2—Right to have a Crisis Center notified before medical examination.
- Penal Code section 293—Notice to sex offense victim that victim's name will become public record unless victim requests otherwise; disclosure of victim's address prohibited.
- Penal Code section 293.5—Identity of sex offense victim; court may grant anonymity.
- Penal Code section 679.04—Right to have an advocate present at examination or interview; "advocate" defined.
- Penal Code section 1127d—Jury instructions regarding rape victim's previous consensual intercourse with defendant.
- Penal Code section 1203.1g—Restitution for medical or psychological treatment of minor sexual assault victim.
- Penal Code section 1347—Use of closed-circuit television to communicate testimony if victim of certain sexual offenses is age 13 or less.
- Penal Code section 13823.95—Costs incurred by emergency medical facilities for examination of sexual assault victims.
- Penal Code section 637.4—Prohibition on use of polygraph examination as prerequisite to accusatory pleading.
- Penal Code section 1112—No psychiatric examination necessary for sexual assault victim.
- Penal Code section 680—Sexual assault victims' DNA Bill of Rights.
- Penal Code section 667.6(f)—Provides that the court may impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced for the following offenses:

  Rape

  Spousal rape

  Rape, spousal rape, or sexual penetration, in concert

Sodomy

Lewd or lascivious act

Continuous sexual abuse of a child

Oral copulation

Sexual penetration

APPENDIX B – VICTIMS' BILL OF RIGHTS ACT OF 2008

· To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.

· To be reasonably protected from the defendant and persons acting on behalf of the defendant.

· To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.

· To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.

· To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.

· To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of an informed before any pretrial disposition of the case.

· To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.

· To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue to a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.

· To provide information to probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.

· To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.

· To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.

· To restitution.

A. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.

B. Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.

C. All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.

· To the prompt return of property when no longer needed as evidence.

· To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.

· To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made

APPENDIX C

- Training should include modern investigative procedures, proper methods for interviewing victims, witnesses, and suspects;
- Training should include:
  - The impact of sexual assault crimes on victims;
  - Meeting the mental health needs of sexual assault victims in the criminal justice system;
  - The effective role of multi-discipline centers, especially for interviewing victims of suspected sexual assault crimes;
  - The effective role of Sexual Assault Response Teams (SART);
  - The effective, comprehensive and collaborative Family Justice Centers created in communities throughout the state as a *best practice* in the response, investigation, prosecution and prevention of sexual assault;
  - The development of forensic, scientific tools, most significantly in DNA, the evolution of criminal justice databases, particularly CODIS and the Department of Justice (DOJ) DNA database ~ cold hit program;
  - Changes in the law that require those arrested for felony crimes to submit biological samples~DNA profiles to DOJ;
  - Recent developments and updates in the law and *best practices*.

APPENDIX D - Suggested Guidelines Criteria

- The responsibility of the law enforcement personnel receiving the initial report of an offense.
- The responsibility of the responding officer.
- Evidence documentation and collection procedures, particularly for DNA and/or drug facilitated analysis.
- Sexual Assault Response Teams (SARTs) and other “team” response structures.
- Crime scene preservation.
- Victim notification regarding investigative procedures
- Confidential Communication protections.

- Victim interviewing.
- Suspect interview / interrogation.
- Mandatory notifications.
- Follow-up investigative procedures.
- Case management.
- Officer wellness;

APPENDIX E - Mentor DA program criteria

- Identify Expert Sexual Assault Prosecutors;
- Commit to 1 year (at a minimum) as a Mentor;
- Identify area(s) of expertise;
- Identify methods of mentoring;
- General Mentor available for consultation and technical assistance;
- Provide individualized & directed training to an office or group of prosecutors;
- Provide one-on-one Mentoring during a trial.

APPENDIX F - Suggested treatment provider training content

Documentation of training obtained should include, but not be limited to, the following topics of training.

- Assessment and treatment of deviant sexual arousal, interest, or behavior
- Overcoming denial or minimization by offenders
- Identifying and correcting cognitive distortions used by sexual offenders
- Effects of abuse on victims and enhancing victim empathy
- Understanding how to address the effects of the offenders' own childhood victimization experiences as a research based method to enhance offender empathy for their victims
- Identifying antecedent patterns or offense cycles

- Developing self monitoring and relapse prevention skills
- Accountability strategies including use of polygraphy, global positioning satellite systems, monitoring community involvement, offender registration requirements, alcohol and other drug testing within the context of sex offender treatment
- Enhancing pro-social skills i.e. assertiveness training, relationship skills, anger management, affect regulation skills, pro-social goal attainment strategies
- Treatment of mental illness and/or substance abuse within the context of sex offender treatment
- Evidence based practices applied to sex offender treatment, such as the risk, needs, and treatment responsivity strategies and cognitive behavioral therapies
- Age, gender, or developmental level appropriate interventions, e.g. for adolescents, learning disabled, female, or persons with intellectual disabilities
- Neurodevelopmental aspects of human development and sexuality
- Use of psychotropic medications in treatment of sexual deviance or dysfunction
- Collaboration with other Containment Model professionals including probation or parole, victim advocates, polygraph examiners, and circle of support and accountability members
- Interaction with the criminal justice system
- Mandatory reporting of suspected child or dependent/elder abuse
- Other topics related to sex offender treatment and management

APPENDIX G - Suggested Treatment documentation and structure

Such documentation should include, but are not limited to, the following:

- A statement of the programs' philosophy of change, potential risks & benefits from participation in sex offender specific treatment, and what strategies will be used in support of the change process,
- Discussion of assessment tools and evaluative processes to be implemented including defining how re-offense risk level, criminogenic

needs, and treatment responsivity will be considered in designing treatment, case management, and completion plans for individual participants,

- A description of the cognitive-behavioral rationale and methodologies to be utilized including but not limited to accepting responsibility for the criminal acts, cognitive restructuring, relapse prevention training, self regulation and affect regulation training, and life skills that may improve the offenders likelihood of successful living with no more victims,

- Model informed consent forms for treatment, testing, release of information, and treatment contract that defines the limitations of confidentiality, the nature of the treatment providers' relationship with Probation or Parole, i.e. the Containment Model, the rules and expectations of the program, and how records will be secured,

- Discuss methods of offender accountability including, but not limited to, use of polygraphy, self-report methods, drug testing, and community supervision by Probation Officers and/or Parole agents,

- How violations of treatment program, Probation, or Parole rules and conditions will be handled as well as how client data is protected, used in research, or secured,

- Discuss how decisions will be made regarding modalities of treatment, i.e. individual therapy, group therapy, a combination of therapies, and use of adjunct services such as twelve step programs or use of psychotropic medications, and

- Discussion of the Program Director's training, education, and experience, status of CASOMB approval, and that of staff therapists who may work with the offender.

APPENDIX G- Special Conditions of Supervision

This supervision typically should include:

- Ensuring that the offender is actively engaged in and consistently attending an approved community-based treatment program;

- Verifying the suitability of the offender's residence and place of employment;

- Monitoring the offender's activities by conducting frequent, unannounced field visits at the offender's home, at his place of employment, and during his leisure time (e.g., is he engaging is inappropriate, high risk behavior such as collecting items that depict or are attractive to children?); and

- Helping the offender to develop a community support system-including friends, family members, and employers who are aware of the offenders

criminal history, are supportive of the community supervision plan, and can recognize the sex offenders risk factors.

APPENDIX H - Summary of GPS Studies

Listed below are the states who have conducted some level of evaluation of their GPS programs:

California

The University of California, Irvine, Center for Evidence-Based Corrections completed an evaluation of CDCR sex offender parolees. This evaluation covered the time period of June – November, 2005. In this study, 94 parolees comprised the experimental group and 91 parolees were in the control group. The results and/or recommendations were as follows:

Parole Agents found the GPS program very time consuming. Reviewing the GPS tracks as well as responding to false alarms took up a great deal of time.

Sharing of data with police departments in order to solve sex offense crimes proved to be more difficult then expected.

GPS parole agents had significantly higher individual parolee contacts then HRSO parole agents with out GPS.

GPS monitoring had little effect on parolee recidivism. The only significant difference between the experimental and control groups was on rates of absconding. GPS parolees were less likely to be found guilty of a parole violation for this behavior.

Just over 50 % of both the experimental and control groups had a parole violation during the evaluation period. Most were for technical violations.

Tennessee

In July, 2004, Tennessee enacted the Serious and Violent Sex Offender Monitoring Pilot Project Act. This authorized the Tennessee Board of Probation and Parole (BOPP) to monitor sex offenders using Global positioning systems technology on a pilot basis. The statute specifically enabled BOPP to use GPS as a mandatory condition of release for certain offenders, as deemed appropriate by BOPP.

Middle Tennessee State University (MTSU) evaluated the results of the pilot program (based on an experimental group of 493 sex offenders) and came to the following conclusions:

When the treatment and control groups were statistically compared by their first year of supervision and by the same year of supervision, no statistically significant differences were found in the number of violations, new charges, or in the number of days before the first violation.

Although the empirical analysis did not yield definitive support for satellite-based monitoring, BOPP's pilot project indicates that GPS provides officers with a unique supervision tool and has potential in aiding officers.

New Jersey

New Jersey's Sex Offender Monitoring Pilot Project Act became law in 2005 and authorized the New Jersey State Parole Board to subject up to 250 of the State's most dangerous sex offenders to round-the–clock Global Positioning System (GPS) monitoring.

The project was evaluated by the State Parole Board with the following conclusions:

The use of GPS technology was an essential tool when being utilized as a component of the "containment model" being utilized in New Jersey. The use of intensive supervision, law enforcement information sharing, and sex offender specific treatment are targeted to most effectively use external law enforcement controls and internal psychological controls, to prevent further sexual victimization.

The State Parole Boards GPS monitoring has contributed (when used with the rest of the containment model) to a significantly lower recidivism rate than nationwide data indicates for high-risk sex offenders. The monitoring also provides an in valuable resource for investigations, by providing data that can be compared with the times and place of new sex crimes.

North Carolina

North Carolina completed a short term evaluation of the sex offenders being monitored by GPS. This evaluation covered a 6 month period of time and included 83 offenders who were being monitored at some point during the evaluation period.

The evaluation reported lower then normal violations and revocations.

They also had no new criminal offenses reported during the reporting period.

Maryland

The Maryland Task Force to Study Criminal Offender Monitoring by Global Positioning Systems completed an evaluation of the efficacy of using GPS

monitoring in Maryland and made recommendations to the Governor. Among those recommendations were:

> Authority for the usage of GPS for monitoring offenders would be given to the Division of Probation and Parole. Extensions of probation and parole should be given to appropriate offenders.
>
> GPS monitoring should be utilized on high risk offenders when location is a primary concern.
>
> GPS monitoring should be part of comprehensive case planning, which may include treatment, intensive supervision, polygraph exams and other elements.
>
> GPS monitoring should be part of a supervision modality using standardized risk assessment instruments. GPS, like other supervision tools, should not be applied en mass to all offenders or categories of offenders.

Appendix I

Recommended Changes to California Law On Sex Offender Registration and Internet Notification

It's recommended that California amend its law on duration of registration, which should depend on individual risk assessment, history of violent convictions, and sex offense recidivism

The proposed changes to California law take into consideration the seriousness of the offender's criminal history, the empirically assessed risk level of the offender, and whether the offender is a recidivist or has violated California's sex offender registration law. Duration of registration would range from ten (10) years to lifetime (10/20/life). For purposes of the tiering scheme, Penal Code section 667.5 lists violent offenses, including violent sexual offenses. (Appendix B).

Tier 1: Register for 10 years

Low to moderate risk score on the Static-99 (score 0-3); sex offense was not a violent offense or a violation of Penal Code section 647.6; no new sex offense or any violent offense was committed within 10 years of release from custody or after release on probation on the registrable sex offense; no conviction for violation of the Sex Offender Registration Act ("SORA" - Pen. Code, §§ 290-290.023).

Tier 2: Register for 20 years

Moderate to high risk (score 4-5), or person who committed a violent sex offense or violation of Penal Code section 647.6, and has been released from custody or released on probation for 20 years; no new violent sex offense was committed within 20 years of release from custody or release on probation on the registrable offense; no conviction for violation of the Sex Offender Registration Act ("SORA" - Pen. Code, §§ 290-290.023).

Tier 3: Register for Life

High risk score on the Static-99 (6 and above), or a person who is a recidivist, defined as a person who has two or more convictions, brought and tried separately, for violent sex offenses; or a person who was ever committed as a sexually violent predator pursuant to Welfare and Institutions Code section 6600, et seq.

Petition for Tier 1 Status for Romeo and Juliet Offenders

Low to moderate risk offenders (Static-99 scores 0-3) convicted of registrable sex offenses against no more than one minor victim age 13-17, who were no more than seven (7) years older than the minor at the time of the offenses, can petition the court for tier 1 status. The offender must show that the offense was consensual in order to be granted tier 1 status.

NOTE: S.B. 325, pending in the 2009 legislative session, would allow registered sex offenders to request a Static-99 score by submitting a request to the registering agency. The score must either be determined by Probation, or by qualified law enforcement personnel who have received training from a SARATSO trainer.

Risk assessment research on sex offenders tells us that successful completion of a specific sex offender treatment program indicates the offender is at lower risk to re-offend; and cooperation on supervision is a dynamic risk assessment factor indicating less risk of re-offense. However, today there is no sex offender treatment being offered in California prisons, and there are differing opportunities for treatment for offenders on probation and parole. Fiscal problems have ended a number of treatment options at the time of this report. Further, at this time California has no statute requiring credentialing of sex offender treatment providers, meaning that when treatment is offered the state has no way of verifying that the treatment methods used are appropriate and the treatment provider is competent and well-trained.

At some future date, when California offers sex offender treatment to all sex offenders, and when sex offender treatment providers are required to be credentialed by the state, policy makers may want to consider making successful completion of treatment a factor in determining duration of registration. Similarly, if information on supervision cooperation is incorporated in the state sex offender registry at some future date, policy makers may want to consider whether

successful completion of probation or parole should also factor into the duration of registration requirements.

The committee recommends that changes to California law on registration apply prospectively. Probation did not begin to score all sex offenders pre-sentencing until July 1, 2008. Parole began to score all sex offenders prior to release from prison in 2006. For purposes of tier determinations, the pre-sentencing Static-99 score must be used–-re-scoring will not be available. However, registrants who do not have Static-99 score which was computed pre-sentencing on or after July 1, 2008, may use a Static-99 score which was done by Parole prior to release from prison on or after January 1, 2006. Other registered sex offenders, who do not have a pre-sentencing score or a score done prior to release on Parole after 2005, may request to be scored through their registering law enforcement agency for purposes of determining tier level. Those offenders who were not scored pre-sentencing or on release from prison in 2006 or afterward, and who do not request a score, will remain in the lifetime registration tier. Since no SARATSO instrument is currently available for scoring female sex offenders, tier level will be determined by utilizing the other factors in each tier, without regard to risk assessment scores.

We also recommend posting all offenders in Tiers 2 and 3 on the public Megan's Law Internet web site, and that California eliminate its current law permitting designated sex offenders to apply for exclusion from the Internet web site (Pen. Code, § 290.46, subd. (e).)

Appendix J

Violent Offenses

The following are the offenses which are deemed violent for purposes of this proposed legislation, as defined in Penal Code section 667.5:

(1) Murder or voluntary manslaughter

(2) Mayhem

(3) Rape (Pen. Code, section 261(a)(2), (6); 262(a)(1), (4))

(4) Sodomy (Pen. Code section 286(c), (d))

(5) Oral copulation (Pen. Code, section 288a(c), (d))

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288

(7) Any felony punishable by death or imprisonment in the state prison for life

(8) Any felony in which the defendant inflicts great bodily injury, as defined

(9) Robbery

(10) Arson (Pen. Code, section 451(a), (b))

(11) Foreign object penetration (Pen. Code, section 289(a), (j))

(12) Attempted murder

(13) Explosion to commit murder, mayhem, or great bodily injury (Pen. Code, §12308, 12309, 12310)

(14) Kidnapping

(15) Assault with intent to commit a felony (Pen. Code, section 220)

(16) Continuous sexual abuse of a child (Pen. Code, section 288.5)

(17) Carjacking (Pen. Code, section 215(a))

(18) Rape, spousal rape, or sexual penetration, in concert, (Pen. Code, section 264.1)

(19) Extortion (Pen. Code, section 518)

(20) Threats to victims or witnesses (Pen. Code, section 136.1)

(21) First degree burglary where it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary (Pen. Code, section 460(a))

(22) Use of a firearm in the commission of specified serious felonies (Pen. Code, section 12022.53)

(23) Sending or possession of weapons of mass destruction (Pen. Code, section 11418)

Appendix K

Summary of Laws in Risk Assessment States

Arizona

Levels 1-3, as determined by the Department of Public Safety. A risk assessment screening profile is completed for each sex offender. This instrument evaluates 19 criteria hat are considered to be significant factors contributing to sex offender recidivism. Each criterion is given a score, which is then totaled to arrive at the recommended risk level. All criminal justice agencies must use the standardized Arizona Risk Assessment; however, occasionally law enforcement discovers

information which can affect an offender's risk level. As such, law enforcement is given the discretion to either accept the recommended risk level or complete another risk assessment.

Notification: Based on level of risk. Mandatory local notification and Internet notification on levels 2-3.

Review: Offender can request court review of risk level; courts have discretion to terminate registration in some circumstances. Unclear if circs. are statutorily defined.

Duration: 1st offense, 10 years; 2d offense, life.

Comments: Unclear if 19-factor assessment instrument is empirically based.

Arkansas

Levels 1-3, determined by Sex Offender Assessment Committee. Guidelines in statutes and Committee's policies and procedures. Level 1, no prior history; level 2, history of offending and notification inside home is insufficient; level 3, violent, predatory, antisocial offenders. All offenders are required to submit to a risk assessment to be completed by the Department of Correction Sex Offender Screening and Risk Assessment Program (SOSRA). The offender is notified by certified mail of the location, date and time of the assessment. It is a Class C Felony to fail to appear for assessment or to not fully submit to the assessment process. The offender is assessed as a default Level 3 should this occur.

Community Notification Assessments may include, but are not limited to, the following:

• A review of the sex offender's criminal history, with particular attention given to any offense that was sexual or violent in nature.

• An interview of the sex offender completed by SOSRA staff.

• A polygraph examination or a Voice Stress Analysis in cases in which SOSRA staff do not believe that they have adequate information to accurately assess the offender.

• A thorough review of any mental health records available to SOSRA staff at the time of assessment that may be relevant to the offender's risk to the community.

• Psychological testing when deemed necessary by SOSRA psychologists.

• Other information that is relevant to the offender's offense history and/or pattern.

• Completion of appropriate actuarial instruments designed to assess individuals convicted of sexual offenses.

At the SOSRA assessment, state law protects any admissions made by the offender during the assessment interview from use in a criminal proceeding. In this way, the individual's Fifth Amendment rights are protected. Therefore, the offender may not avoid answering questions by claiming protection under the 5th Amendment right to avoid self-incrimination. The interviewer completes the actuarial instruments deemed appropriate by SOSRA psychologists. The actuarial instruments are only one component of the assessment (see above).

(See Arkansas Sex Offender Assessment Committee Guidelines and Procedures 2007, http://www.acic.org/Registration/SOAC%20GL%202007.pdf.)

Notification: Guidelines in statute and policies and procedures govern community notification assessments to determine appropriate level of notification. Internet: Determined by level of risk assessed and if offender was over 18, and victim was age 14 or less.

Juveniles: registration is based on adjudication for certain more serious offenses.

Duration: Sexually violent predator, aggravated, recidivist: Lifetime. Others: 15 years, after which application for termination from registry can be made.

Notification: Based on risk level.

Registration: Offense based: courts must designated whether an offense qualifies as an "aggravated sex offense," depending on defined circumstances; triggers lifetime registration.

Review: Yes, appealable to the SOAC, on grounds that procedures of SOSRA were not properly followed; or documents or information was not available at the time of the assessment that are relevant to risk; or assessment is not supported by substantial evidence. Reviewing member of SOAC decides whether to submit to full committee to modify the notification level; majority vote of SOAC required to change level. Offender may appeal administrative decision denying modification of notification level.

Overrides to empirical risk assessment:

Increased notification level:

Prior juvenile or adult sex offenses; multiple victims or offenses, even if not resulting in conviction. Can use known or self-admitted molestations, offenses that were reported and investigated, even if not prosecuted, and offenses primarily sexual in nature but pled down to non-sexual offenses.

Historical data or offender statements suggesting psychological abnormalities predisposing offender to sexual offending; addiction or other issues reducing ability to control sexual impulses, or increases potential for sexual violence; other data suggesting higher risk than the actuarial model predicts.

If offense involved great bodily injury or death, no less than a level 3 may be assigned.

If the offender has provided information on the record or in the interview that he is likely to commit subsequent sex offenses, no less than level 3 may be assigned; and may want to consider for level 4 evaluation (SVP).

Offender's offense history, behavior or victim characteristics (e.g., very young victim, stranger victim, extra-familial victim) suggests higher notification level than actuarial risk level would support.

Decreased notification level:

Offender demonstrates, after treatment, significantly enhanced impulse control ability and decreased predisposition to reoffend. (not applied to level 4's)

If evidence offense was temporary aberration or unlikely to recur, may lower community notification level from risk level set by actuarial instrument.

Victim recantations may permit adjustment of risk level used for notification. (Editorial comment: this is not a good idea unless a court found the recantation credible).

Statutory sex offenses not involving violence, deviance, or coercion, as long as there is no pattern of such offenses, may justify a lower level of community notification than suggested by the actuarial instruments.

Colorado

The Colorado Sex Offender Management Board does risk assessment to determine sentencing and treatment; risk level does not affect registration or notification obligations. Unclear what risk assessment instrument(s) are used.

Probation does a pre-sentencing risk assessment on sex offenders. Probation officers assessing sex offenders during the pre-sentence investigation must have successfully completed required training. A pre-sentence investigation must address the following:

Criminal history

Education/employment

Financial status

Residence

Leisure/recreation

Companions

Alcohol/drug problems

Victim impact

Emotional/personal problems

Attitude/orientation

Family, marital and relationship issues

Offense patterns and victim grooming behaviors

Sex offense-specific evaluation report

Risk factors, risk level, and amenability to treatment

The potential impact of the sentencing recommendation on the victim

Sexually Violent Predator (SVP) assessment

When referring an offender for a sex offense-specific evaluation, pre-sentence investigators should send to the evaluator, as part of the referral packet:

Police reports

The victim impact statement

Child protection reports

A criminal history

Any available risk assessment materials

Prior evaluations and treatment reports

Prior supervision records, if available

Any other information requested by the evaluator

Duration: Depends on offense, 20 years for some, 10 years for less serious; 5 years for misdemeanors, life for specified offenses. All offenders can petition court for termination after a minimum period for their offense, except those required for life.

Notification: Offense-based, not risk-based.

Connecticut

Risk Assessment Board determines risk levels, but these do not affect registration or notification requirements.

Duration: 10 years; persons under 19 at time of offense or who committed a nonviolent offense can apply for exemption, following victim notification and comment, and a determination that registration is not required for public safety.

Delaware

Sex Offender Management Board determines risk tier levels I-III. These apply to registration and community notification. By Jan. 2009 the Board was to approve a risk assessment instrument to assist any sentencing authority in determining risk of recidivism. Board was to consider risk assessment research in carrying out this duty. This was changing the system from an offense-based to a risk-based system. Current tiers are offense-based though.

Duration: Life for Tier III and other tiers if recidivists. Tier II- 25 years. Tier I - 15 years.

Notification: Depends on tier level.

Georgia

Sexual Offender Registration Review Board determines likelihood offender will re-offend against a child or with a sexually dangerous offense.

Levels 1-3: unclear if risk based or offense based.

Duration: Life

Notification: All.

Idaho

Sex Offender Classification Bd. determines who is a high risk offender or sexual predatory; criteria unclear.

Duration: 10 years, after which offenders who qualify for this registration period can apply for termination; recidivist, violent or aggravated offenders register for life. Aggravated offenses are offense-based classification.

Iowa

Risk assessment determines whether there is community notification; Iowa uses low-high risk levels, but it is unclear if the levels are offense or risk-based. Internet displays moderate and high risk offenders; at neighborhood meetings, law enforcement can disclose on high risk offenders.

Massachusetts

Sex Offender Registry Board assesses levels 1-3. Criteria are unclear.

Notification on request on levels 2 & 3; based on whether a citizen is likely to encounter the offender, disclosure is permitted as to level 3's only; Internet site displays level 3's only.

Minnesota

Dept. of Corrections assesses Levels I-III. The Department of Corrections was required to consult with others to develop a risk assessment scale. The state developed and uses the MnSOST-R, a risk assessment tool normed on a Minnesota sex offender-*// population. Duration of registration depends on whether the offender is deemed recidivist, murdered the victim, or is a sexual psychopath or sexually dangerous person. Registration is for10 years, or life if recidivist, etc.

Notification: Internet, tier III only; for groups deemed likely to be victimized, notification on tiers II or III are permitted to groups or individuals; for a person likely to encounter - can disclose on tier III only.

Montana

Dept. of Corrections assigns risk levels, which apply to registration and notification provisions. Dept. or evaluator provides court with sexual offender evaluation report recommending a tier level.

Notification: Internet, level 3 only; other types of notification depends on offense and tier level.

Nebraska

Psych. Dept. of Univ. of Neb. developed risk assessment tool, used by Nebraska State Patrol to classify sex offenders.

Notification: Level 2's in certain circumstances; Level 3 on Internet.

New Jersey

Attorney General (AG) classifies risk level in consultation with Notification Advisory Council. Tiers I-III. AG guidelines for factors relevant to reoffense. Notification based on AG procedures and degree of risk of reoffense.

Notification is tier II for organizations/people likely to encounter the SO, and Tier III for Internet posting.

New York

Board of Examiners of Sex Offenders and Sentencing Court assesses level 1-3; Board develops guidelines and procedures to assess risk and makes recommendation to sentencing court as to whether the offender is a sexual predator, sexually violent offender, or predicate sex offender, and on what risk level to assign.

Notification: Internet, levels 2-3 only. Discretionary community notification on level 1, can't post or disseminate exact address.

North Dakota

Risk assessment by AG's office, in conjunction with Corrections, LEAs, victims' services, juvenile services, and other professionals. Review criminal history, evaluations, and other pertinent documents. High, moderate and low risk, scored on actuarial tools.

Notification: Internet: all offenders; mandatory community notification, on moderate and high risk offenders to agencies serving children and vulnerable populations.

Oklahoma

Committee selects an existing sex offender screening tool, which must use an objective point system under which a person is assigned a designated number of points for each of the various factors and the offense for which the person is convicted. Low -high (1-3).

Notification: Internet- all. Local: anyone deemed appropriate can be notified about habitual or aggravated offenders.

Rhode Island

Risk Assessment Board of Review selects instruments for determining risk, and assigns low, moderate or high risk level. Only those found SVPs, i.e., likely to reoffend by looking at offense, risk assessment tool, and psych. eval. are subject to notification. Internet: levels II, III, and notification to schools, day care on these levels; others discretionary if necessary for public safety.

Texas

Risk Assessment Review Committee, w/n Dept. of Crim. Justice, selects risk assessment tool or develops own. No appeal of risk level. Levels 1-3.

Texas uses the Static-99, the Stable/Acute 2007, the Level of Service Inventory - R (LSI-R), and the Hare Psychopathy Checklist Revised (PCL-R) to complete a risk needs assessment on sex offenders sent to prison. There is a records review and interview by a licensed sex offender treatment provider within the Department of Corrections, which is done prior to release from prison. The risk levels assigned depend on the combination of scores the offender has on the Static-99, LSI-R, and PCL-R. Then a release plan is formulated by the treatment provider for community supervision and treatment. The provider identifies the inmate's risk level; specifies the community treatment corresponding to the risk level; specifies which dynamic needs are to receive priority in supervision; and specifies a level of polygraph services that corresponds to the risk level. Low risk offenders report to parole or probation once a month; medium risk, to a more frequent schedule for sex offenders; and high risk, to an intensive schedule that includes GPS monitoring.

Additionally, probation officers participated in a 5-year pilot project to assess offenders who had 5-10 years probation terms. Probation officers were trained to conduct the PCL-R, Static, and LSI-R. Treatment providers conduct the PPGs and VRT and polygraph examiners provide the sexual history polygraph. The offender must pay for all risk assessment on probation, unless indigent. The goal in Texas is to eventually do risk assessment pre-sentencing on all sex offenders, to save costs to the state. By identifying high risk sex offenders by risk assessment, it saves the state money (i.e. $2.17/day for probation vs. $47/day in prison in Texas).

Notification: Internet: All. Discretionary: level 3.

Vermont

Combines use of risk assessment tools and clinical assessments.

Internet: High risk sex offenders, recidivists, those w/ offenses for aggravated sexual assault, those in violation; no one under 18. Community notification if necesary for public safety, on any.

Washington

End of Sentence Review Committee assigns risk levels, Tiers I-III, reviews release plans.

Notification depends on tier levels. Internet: Tiers II-III, and Tier I if out of compliance.

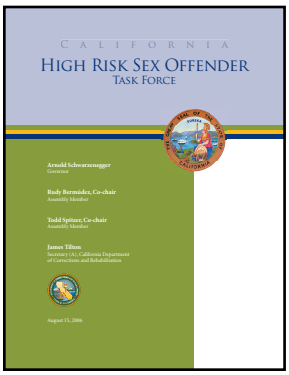
APPENDIX J - Registration Violations

California's Sex Offender Registrants: In Violation, by County, as of November 2009

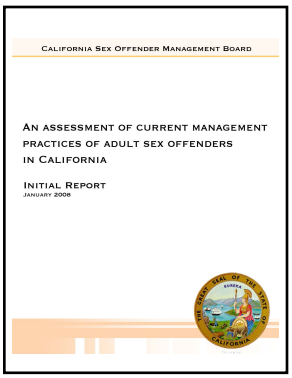
COUNTY	TOTAL IN THE COMMUNITY	TOTAL IN VIOLATION	PERCENT IN VIOLATION
ALAMEDA	2373	640	27.0%
ALPINE	2	1	50.0%
AMADOR	62	4	6.5%
BUTTE	719	57	7.9%
CALAVERAS	100	10	10.0%
COLUSA	45	14	31.1%
CONTRA COSTA	1357	197	14.5%
DEL NORTE	143	22	15.4%
EL DORADO	343	33	9.6%
FRESNO	2367	314	13.3%
GLENN	74	4	5.4%
HUMBOLDT	481	42	8.7%
IMPERIAL	222	74	33.3%
INYO	53	10	18.9%
KERN	2148	376	17.5%
KINGS	350	60	17.1%
LAKE	267	9	3.4%
LASSEN	81	13	16.0%
LOS ANGELES	15461	4263	27.6%
MADERA	376	46	12.2%
MARIN	157	14	8.9%
MARIPOSA	65	3	4.6%
MENDOCINO	262	17	6.5%
MERCED	727	135	18.6%
MODOC	47	3	6.4%
MONO	14	3	21.4%
MONTEREY	692	137	19.8%
NAPA	202	19	9.4%
NEVADA	181	11	6.1%
ORANGE	2987	512	17.1%
PLACER	543	43	7.9%
PLUMAS	42	8	19.0%
RIVERSIDE	3367	237	7.0%
SACRAMENTO	5176	1649	31.9%
SAN BENITO	112	10	8.9%
SAN BERNARDINO	3816	304	8.0%
SAN DIEGO	3887	201	5.2%
SAN FRANCISCO	1092	170	15.6%

SAN JOAQUIN	1790	251	14.0%
SAN LUIS OBISPO	438	27	6.2%
SAN MATEO	805	131	16.3%
SANTA BARBARA	636	89	14.0%
SANTA CLARA	3517	594	16.9%
SANTA CRUZ	425	46	10.8%
SHASTA	771	35	4.5%
SIERRA	10	0	0.0%
SISKIYOU	194	21	10.8%
SOLANO	843	89	10.6%
SONOMA	810	68	8.4%
STANISLAUS	1307	177	13.5%
SUTTER	245	28	11.4%
TEHAMA	271	11	4.1%
TRINITY	62	4	6.5%
TULARE	1071	185	17.3%
TUOLUMNE	156	12	7.7%
VENTURA	1126	193	17.1%
YOLO	411	53	12.9%
YUBA	289	42	14.5%
TOTAL	**65570**	**11721**	**17.9%**

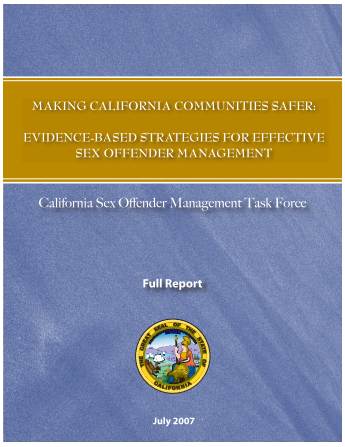
Publications Available at www.casomb.org



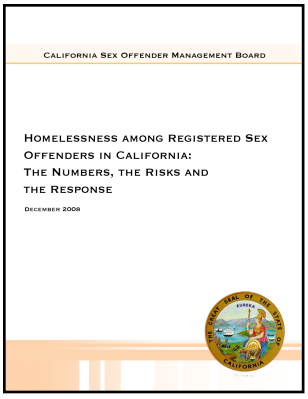
High Risk Sex Offender Task Force
2006



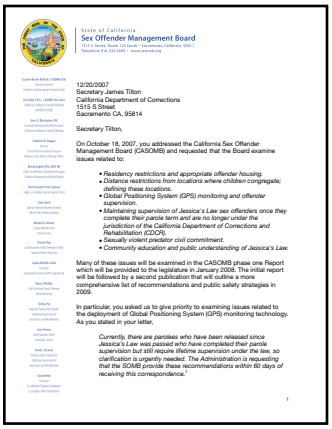
CASOMB Assessment
2008



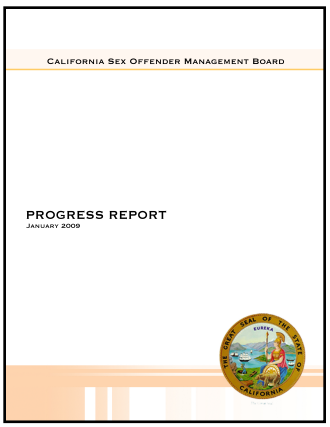
California Sex Offender Management Task Force
2007



CASOMB Housing Paper
2009



GPS Letter to Secretary Tilton
2008



CAOMB Progress Report
2009