

ITEM 4
PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Penal Code Section 680 as Amended by
Statutes 2019, Chapter 588 (SB 22)
Sexual Assault Evidence Kits: Testing

20-TC-01

City of San Diego, Claimant

TABLE OF CONTENTS

Exhibit A

Test Claim Decision..... 1-41

Exhibit B

Draft Expedited Parameters and Guidelines 1-18



Exhibit A

July 23, 2021

Mr. Kris Cook
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

Captain Jeffrey Jordon
City of San Diego
San Diego Police Department
1401 Broadway
San Diego, CA 92101

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Decision

Sexual Assault Evidence Kits: Testing, 20-TC-01
Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22)
City of San Diego, Claimant

Dear Mr. Cook and Captain Jordon:

On July 23, 2021, the Commission on State Mandates adopted the Decision partially approving the Test Claim on the above-captioned matter.

Sincerely,


Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22) Filed on December 31, 2020 City of San Diego, Claimant	Case No.: 20-TC-01 <i>Sexual Assault Evidence Kits: Testing</i> DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. <i>(Adopted July 23, 2021)</i> <i>(Served July 23, 2021)</i>
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TEST CLAIM

The Commission on State Mandates adopted the attached Decision on July 23, 2021.



Heather Halsey, Executive Director

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

IN RE TEST CLAIM Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22) Filed on December 31, 2020 City of San Diego, Claimant	Case No.: 20-TC-01 <i>Sexual Assault Evidence Kits: Testing</i> DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. <i>(Adopted July 23, 2021)</i> <i>(Served July 23, 2021)</i>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on July 23, 2021. Brittany Thompson appeared on behalf of the Department of Finance. The claimant did not appear at the hearing.

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 partially approve the Test Claim by a vote of 5-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
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	Absent
Spencer Walker, Representative of the State Treasurer	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

This Test Claim filed by the City of San Diego (claimant) alleges that reimbursement is required for state-mandated activities arising from Statutes 2019, chapter 588 (SB 22), which amended Penal Code section 680 to require law enforcement agencies to perform specified activities relating to DNA testing of sexual assault forensic evidence within specified time periods.

The Commission finds that effective January 1, 2020, Penal Code section 680(c)(1) and (2) (Stats. 2019, ch. 588) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on county and city law enforcement agencies, in whose jurisdiction specified sex offenses have occurred for the following activities:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 288a occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - a. Submit sexual assault forensic evidence to the crime lab within 20 days after booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)
2. For any sexual assault forensic evidence received on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:
 - a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence.¹ (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

¹ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 3. The courts will give weight and appropriate deference to the interpretation of a statute by the agency charged with its implementation. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

The Commission finds that all other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed and supported by evidence in the record by the claimant for inclusion in the Parameters and Guidelines pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5, *with the exception* of follow-up investigation, which the Commission finds is not a reimbursable activity.

Accordingly, the Commission partially approves this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2020 Effective date of Statutes 2019, chapter 588, amending Penal Code section 680.

12/31/2020 The claimant, City of San Diego, filed the Test Claim.²

03/29/2021 The Department of Finance (Finance) filed comments on the Test Claim.³

05/07/2021 The claimant filed late rebuttal comments.⁴

05/20/2021 Commission staff issued the Draft Proposed Decision.⁵

II. Background

This Test Claim alleges reimbursable state-mandated activities and costs arising from Penal Code section 680, as amended by Statutes 2019, chapter 588 (SB 22), effective January 1, 2020. Penal Code section 680, known as the Sexual Assault Victims' DNA Bill of Rights, was amended by the test claim statute to make mandatory the previously encouraged processes and related time frames for DNA testing of sexual assault forensic evidence received by a law enforcement agency on or after January 1, 2016.

A. Prior Law

Penal Code section 680 was added in 2003.⁶ In passing the law, the Legislature found and declared as follows:

Law enforcement agencies have an obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.⁷

The statute as originally enacted authorized law enforcement agencies investigating specified sex offenses to inform victims whether or not a DNA profile was obtained from testing sexual

² Exhibit A, Test Claim, filed December 31, 2020.

³ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021.

⁴ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021.

⁵ Exhibit D, Draft Proposed Decision, issued May 20, 2021.

⁶ Statutes 2003, chapter 537 (AB 898).

⁷ Statutes 2003, chapter 537.

assault forensic evidence from the victim’s case, whether that information was entered into the Department of Justice’s (DOJ’s) data bank of case evidence, and whether there was a match between the DNA profile developed from the victim’s case evidence and the DOJ Convicted Offender DNA Data Base.⁸ The statute also required law enforcement agencies to notify victims in writing when electing not to perform DNA testing on sexual assault forensic evidence or when intending to destroy or dispose of the evidence prior to the expiration of the statute of limitations, as specified.⁹ The statute encouraged law enforcement agencies investigating specified sex offenses to timely perform DNA testing of sexual assault forensic evidence in order to comply with the statute of limitations for filing a criminal complaint.

A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 should perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.¹⁰

In 2014, Statutes 2014, chapter 874 amended Penal Code section 680 by changing the recommendation that law enforcement agencies perform DNA testing “in a timely manner” to instead recommend specific procedures and time limits for law enforcement agencies and crime labs to submit and process sexual assault forensic evidence received on or after January 1, 2016.¹¹

In order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe required by subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803 and to ensure the longest possible statute of limitations for sex offenses, including sex offenses designated pursuant to those subparagraphs, the following should occur:

(A) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 262, 286, 288a, or 289 occurred, *should* do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

(i) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.

(ii) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

⁸ Statutes 2003, chapter 537.

⁹ Statutes 2003, chapter 537.

¹⁰ Penal Code section 680(b)(6), as added by Statutes 2003, chapter 537.

¹¹ Statutes 2014, chapter 874 (AB 1517).

(B) The crime lab *should* do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.

(i) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence.

(ii) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab should upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA.¹²

The inclusion of specific time frames is based on a statutory exception to the 10-year statute of limitations for certain sex crimes that allows charges to be filed within one year of the date when a suspect is conclusively identified by DNA testing, so long as DNA evidence is analyzed within two years of the crime.¹³ Statutes 2014, chapter 874 also revised the notice requirements to require law enforcement agencies to notify victims when an agency does not analyze DNA evidence, regardless of whether the perpetrator's identity is in issue, and to do so within six months of applicable limitations periods.¹⁴

The statute was further amended by Statutes 2017, chapter 692, which changed the recommendation that law enforcement agencies, upon a victim's request, should inform the victim of the status of DNA testing in their case, to require agencies to do so.¹⁵ The bill also prohibited law enforcement agencies from destroying sexual assault forensic evidence from unsolved sexual assault cases before at least 20 years, or, if the victim was under 18 at the time of the assault, before the victim turns 40.¹⁶

B. Test Claim Statute

The test claim statute, Statutes 2019, chapter 588 (SB 22) became effective on January 1, 2020, amending Penal Code section 680(c)(1) and (c)(2)¹⁷ to now require law enforcement agencies, in whose jurisdictions specified sex offenses occur, to submit sexual assault forensic evidence received on or after January 1, 2016 to a crime lab (either themselves or through a rapid

¹² Penal Code section 680, as amended by Statutes 2014, chapter 874, section 1, emphasis added.

¹³ See Penal Code section 803(g)(1).

¹⁴ Statutes 2014, chapter 874, section 1.

¹⁵ Statutes 2017, chapter 692, section 3.

¹⁶ Statutes 2017, chapter 692, section 3.

¹⁷ Because Statutes 2019, chapter 588 renumbered select subdivisions of Penal Code section 680, it also amended Penal Code sections 680.3 and 13823.14 to update references contained therein to the renumbered subdivisions. There has been no test claim filing on these sections.

turnaround DNA program), with submission occurring within specified time limits, and for the crime lab to process sexual assault forensic evidence received on or after January 1, 2016 for DNA or to transmit the evidence to another crime lab for processing, and to upload qualifying DNA profiles into CODIS (“the Combined DNA Index System,” the FBI’s program and software used to store and search DNA profiles) no later than 120 days after initially receiving the evidence.

Accordingly, Penal Code section 680(c) was amended to change “should” to “shall” as follows:

(c) In order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe required by subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803 and to ensure the longest possible statute of limitations for sex offenses, including sex offenses designated pursuant to those subparagraphs, the following ~~should~~ shall occur:

(1) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 262, 286, 287, or 289 or former Section 288a occurred ~~should~~ shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

(A) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.

(B) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

(2) The crime lab ~~should~~ shall do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.

(A) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence.

(B) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab shall upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA.

Both the Test Claim and the legislative analyses for the bill that enacted it repeatedly reference “sexual assault evidence kits” (SAEKs) or “rape kits.”¹⁸ Following a sexual assault, a victim

¹⁸ Exhibit A, Test Claim, filed December 31, 2020, page 7; Exhibit E, Senate Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), December 3, 2018, pages 1-6; Exhibit E, Assembly Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), as amended May 17, 2019, pages 2-8.

may elect to undergo a medical examination to collect forensic evidence.¹⁹ The examination, which may take four to six hours, is conducted by specially-trained medical personnel, who prepare a sexual assault forensic medical evidence kit.²⁰ As of 2019, a standardized sexual assault forensic medical evidence kit containing a minimum number of basic components is to be used throughout the state.²¹ A standard kit includes multiple body swabs that may contain the perpetrator's DNA, and other potential evidence, such as underwear, hair, and fingernail scrapings, and reference buccal swabs collected from the victim's cheek.²² The kit may be stored at a medical facility or sent to the law enforcement agency with jurisdiction over the sexual assault.²³

Many crime labs, including those operated by the DOJ's Bureau of Forensic Services, have established rapid turnaround DNA programs, which expedite processing of evidence samples from SAEKs.²⁴ Penal Code section 680(c)(5) defines "rapid turnaround DNA program" as follows:

For purposes of this section, a "rapid turnaround DNA program" is a program for the training of sexual assault team personnel in the selection of representative samples of forensic evidence from the victim to be the best evidence, based on the medical evaluation and patient history, the collection and preservation of that evidence, and the transfer of the evidence directly from the medical facility to the crime lab, which is adopted pursuant to a written agreement between the law enforcement agency, the crime lab, and the medical facility where the sexual assault team is based.²⁵

Where a rapid turnaround DNA program is in place, the medical facility sends selected samples, from the sexual assault evidence kit, including "the swabs most likely to contain the perpetrator's DNA and sends these, along with a reference buccal swab from the survivor/victim, directly to the crime laboratory," and the rest of the kit is sent to the law enforcement agency.²⁶ Under

¹⁹ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

²⁰ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

²¹ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4; Penal Code section 13823.14.

²² Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

²³ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

²⁴ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

²⁵ Penal Code section 680(c)(5).

²⁶ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, page 4.

Penal Code section 680(c)(3), it is not required that a crime lab receive or test all forensic evidence items obtained in a sexual assault forensic medical evidence examination and is considered to be in compliance when DNA testing is conducted on representative samples of the evidence. Therefore, where a rapid turnaround program is in place, it is a discretionary investigatory decision of the law enforcement agency (LEA) whether to separately test the remaining samples in the kit.²⁷

1. Department of Justice’s Interpretation of the Test Claim Statute.

According to DOJ, the test claim statute “establishes new mandatory requirements for the submission and testing of sexual assault forensic evidence by law enforcement agencies and public crime labs,” and applies to all sexual assault forensic evidence received by a law enforcement agency on or after January 1, 2016.²⁸

Regardless of the date of the alleged offense, if an LEA [law enforcement agency] receives sexual assault forensic evidence on or after January 1, 2016, and none of the case evidence has ever been submitted to a crime lab for analysis, SB 22 requires the LEA to submit sexual assault evidence from the case to a crime lab within 20 days of booking the evidence. The crime lab is required to process the evidence and upload a qualifying DNA profile to CODIS within 120 days of receipt of the evidence by the crime lab.²⁹

The submission and testing requirements are not limited to SAEKs; they include crime scene evidence as well.

While parts of SB 22 specifically mention “rape kit” evidence, the law more broadly addresses the timely analysis of “sexual assault forensic evidence.” The intent of the law is to ensure, in sexual assault cases, that a probative DNA sample is processed and uploaded to the Combined DNA Index System (CODIS) in a timely manner. Thus, if a sexual assault kit is not collected in a case, representative and probative samples of any other types of sexual assault evidence (e.g., the victim’s clothing, bedding from the assault scene, etc.) must be sent to the crime lab for timely processing to meet the sample processing and DNA profile upload requirements of SB 22.³⁰

²⁷ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 4-5.

²⁸ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 1-2.

²⁹ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 2.

³⁰ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 1-2.

Under amended Penal Code section 680(c)(1), once a law enforcement agency has booked sexual assault forensic evidence, it has 20 days to submit the evidence to the crime lab.³¹ Even when a case has been solved, if none of the sexual assault forensic evidence was ever tested, it must now be submitted to a crime lab for testing.³² Similarly, the submission, testing, and uploading requirements equally apply to cases where the victim chooses to remain anonymous or not to participate in the investigation.

The Violence Against Women Act (VAWA) affords sexual assault victims the right to obtain a medical examination and to have forensic evidence collected without being required to immediately, or ever, report the sexual assault to law enforcement. However, VAWA evidence that an LEA has booked into evidence or that has been submitted to a crime lab is not exempt from the processing mandates set by SB 22. Even if a victim has chosen to remain anonymous and/or does not wish to cooperate with an investigation, sexual assault forensic evidence from their case that is received by an LEA or crime lab on or after January 1, 2016, must be tested and any qualifying DNA profiles uploaded to CODIS.³³

Under amended Penal Code section 680(c)(2), the crime lab has 120 days to process sexual assault forensic evidence and upload any qualifying DNA profiles to CODIS or 30 days to transmit the evidence to another crime lab.³⁴ The 120-day time limit applies regardless of whether the evidence is transferred to another lab.

The first lab's 120-day deadline applies even if the evidence is transferred to a second lab. The first lab has 30 days to transmit the evidence to a second lab, and must upload a qualifying DNA profile to CODIS within 30 days after test results are obtained. (Pen. Code, § 680, subd. (c)(2)(B).) Therefore, if the first lab takes 30 days to transmit the evidence to a second lab, the second lab should take no longer than 60 days to process the evidence in order to ensure that the first lab has 30 days to upload a qualifying probative DNA profile into CODIS.³⁵

³¹ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 2.

³² Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 4.

³³ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 5.

³⁴ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 3.

³⁵ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 3.

According to DOJ, “[c]rime labs are considered to be in compliance with the testing mandate when they have processed representative samples of sexual assault evidence ‘in an effort to detect the foreign DNA of the perpetrator.’ (Pen. Code, § 680, subd. (c)(3).)”³⁶

In 2020, DOJ prepared a report summarizing a one-time audit of untested SAEKs in the possession of California law enforcement agencies, crime laboratories, medical facilities and others, as required by Penal Code section 680.4 (Stats. 2018, ch. 950). The report provides the following overview of sexual assault evidence testing:

The purpose of conducting laboratory testing of sexual assault evidence is to establish whether there is evidence that the alleged sexual contact occurred, which may be accomplished by screening for the expected biological materials, and to identify the individual(s) who contributed those biological materials, which may be accomplished through DNA testing if a suitable DNA profile is developed from the evidence and a match to a suspect is found.

Qualifying evidence DNA profiles developed from SAE kits can be searched against the DNA profiles of evidence from other cases, convicted offenders, and arrestees by uploading the profiles to CODIS. CODIS is the Federal Bureau of Investigation’s program and software used to store and search DNA profiles in its Local DNA Index System (LDIS), State DNA Index System (SDIS), and National DNA Index System (NDIS) databases. The three main criminal indices in CODIS are the Forensic Index, which contains perpetrator DNA profiles developed from forensic evidence, the Convicted Offender Index, and the Arrestee Index. DNA profiles may be uploaded as far as the LDIS, the SDIS, and the NDIS, provided they meet the criteria for each level and index.

Once uploaded, the DNA profiles in the three criminal indices are regularly searched against each other to identify potential matches. To link forensic evidence to a known convicted offender or arrestee, the Forensic Index is searched against the Convicted Offender Index and the Arrestee Index. The Forensic Index is also searched against itself to link evidence from different crimes to the same perpetrator (referred to as case-to-case hits).³⁷

2. Legislative History of the Test Claim Statute.

According to the author of the test claim statute, a number of law enforcement agencies did not follow the prior law guidance on submitting and processing sexual assault forensic evidence.

As amended by Chapter 874, Statutes of 2014, California law states that law enforcement agencies “should” transfer rape kit evidence to the appropriate forensic laboratory within 20 days and that laboratories “should” process such evidence as soon as possible, but no later than 120 days, following receipt. Due

³⁶ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), pages 5-6.

³⁷ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Evidence Kits, 2020 Report to the Legislature, pages 4-5.

to the current language of the law, this guidance is not currently being followed by a number of law enforcement agencies in the state.

Findings from public records requests filed by the Joyful Heart Foundation demonstrate significant variation in how law enforcement agencies have interpreted and implemented this legislative guidance. Only two jurisdictions of eight surveyed in 2017 reported full compliance with the intent of the law.

Across California, sexual assault survivors are not receiving equal access to justice. Depending on the jurisdiction in which the crime occurred, the timeframe for submission and analysis of their rape kits may vary widely, slowing the criminal justice process.³⁸

Therefore, the purpose of these amendments was to require law enforcement agencies and crime labs to adhere to the submission and DNA testing procedures and timelines already enumerated in Penal Code section 680, but which were, prior to the test claim statute, only encouraged.³⁹

By amending the language of Penal Code Section 680 from “should” to “shall,” Senate Bill 22 will require all law enforcement agencies and crime labs across the state to follow federal best practices and the intent of existing law. With this change, victims reporting sexual assault across California will have equal access to the swift submission and analysis of forensic evidence associated with their cases. Rape kits must be submitted within 20 days and tested no later than 120 days after receipt, preventing the development of rape kit backlogs in evidence rooms or laboratories throughout California.⁴⁰

The Assembly Committee on Public Safety analysis acknowledges that while “this bill will not undo the backlog of untested kits – estimated to be more than ten thousand by the sponsor of the bill ... – it should prevent additional backlog provided that law enforcement agencies and crime labs have the resource[s] to keep up with the influx of new kit[s].”⁴¹

The Assembly Committee on Appropriations analysis states that the bill was anticipated to result in reimbursable state-mandated costs as follows:

FISCAL EFFECT:

1) Costs (GF/DNA Identification Fund) of approximately \$854,000 annually for the Department of Justice (DOJ) for personnel, operating expenses and equipment.

³⁸ Exhibit E, Senate Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), December 3, 2018, pages 4-5.

³⁹ Statutes 2019, chapter 537, section 1.

⁴⁰ Exhibit E, Senate Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), December 3, 2018, page 5.

⁴¹ Exhibit E, Assembly Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), as amended May 17, 2019, page 6.

2) Possible state reimbursable costs (local funds/GF) in the hundreds of thousands of dollars annually for local law enforcement agencies. The Los Angeles County Sheriff's Department anticipates additional personnel costs of about \$450,000 to process the evidence within the timeframe required. Local costs to comply with this bill would be subject to reimbursement by the state to the extent the Commission on State Mandates determines this bill imposes a reimbursable state-mandated local program.⁴²

III. Positions of the Parties

A. City of San Diego

The claimant alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 and Government Code section 17514 for local law enforcement agencies. While the claimant alleges that Penal Code section 680(c)(1) mandates new activities, it asserts that the costs stemming from those new activities are de minimis and are therefore not being pursued in this Test Claim.⁴³ The claimant alleges costs incurred to comply with the new requirements under Penal Code section 680(c)(2); namely, to test and process all SAEKs received by its crime lab after January 1, 2016.⁴⁴

The claimant states that it incurred increased mandated costs of \$116,138.95 in actual costs in fiscal year 2019-2020 and estimated costs of \$2,335,305.74 in the 2020-2021 fiscal year to implement the mandate.⁴⁵ Additionally the claimant estimates statewide annual costs of \$8,000,000.⁴⁶

The Test Claim is supported by a declaration from Jeffrey Jordon, Captain of the City of San Diego Police Department, stating that the claimant incurred \$116,138.95 in actual costs in fiscal year 2019-2020 and estimating claimant's costs at \$2,335,305.74 in total costs for the 2020-2021 fiscal year to implement the mandate.⁴⁷ The claimant has also included invoices,⁴⁸ a contract between the claimant and the contracted private crime lab,⁴⁹ a hiring memorandum pertaining to new criminalist positions,⁵⁰ and an itemized spreadsheet of consumable costs to support its alleged mandated costs.⁵¹ The claimant notes that its sexual assault evidence kit outsourcing

⁴² Exhibit E, Assembly Committee on Appropriations, Analysis of SB 22 (2019-2020 Reg. Sess.), as amended May 17, 2019, page 1.

⁴³ Exhibit A, Test Claim, filed December 31, 2020, page 9.

⁴⁴ Exhibit A, Test Claim, filed December 31, 2020, page 7.

⁴⁵ Exhibit A, Test Claim, filed December 31, 2020, pages 16-17, and 83-105.

⁴⁶ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁴⁷ Exhibit A, Test Claim, filed December 31, 2020, pages 22-23.

⁴⁸ Exhibit A, Test Claim, filed December 31, 2020, pages 83-105.

⁴⁹ Exhibit A, Test Claim, filed December 31, 2020, pages 56-82.

⁵⁰ Exhibit A, Test Claim, filed December 31, 2020, pages 106-108.

⁵¹ Exhibit A, Test Claim, filed December 31, 2020, pages 109-110.

costs beginning July 1, 2020 were paid with state Citizen Option for Public Safety (COPS) grant funds and are therefore not included in the claim.⁵² The claimant's estimate of statewide costs for the program amount to \$8,000,000 annually.⁵³

While some local law enforcement agencies already submitted and tested all sexual assault forensic evidence kits under the "encouraged" guidelines in preexisting Penal Code section 680, others, including the claimant, did not.⁵⁴ Therefore, the claimant argues, the new activities and costs imposed by the test claim statute will vary by agency and depend on an agency's existing staffing, available equipment, investigative practices, as well as the volume of sexual assaults investigated.⁵⁵

Prior to the passage of the test claim statute, the claimant states that it tested some, but not all, of the sexual assault forensic evidence kits in its possession, which led to a "substantial amount" of kits not being tested.⁵⁶ The claimant alleges that Penal Code section 680(c)(2)(A) requires local law enforcement agencies to perform the following activities as soon as practically possible, but no later than 120 days after initially receiving the evidence:

- Process sexual assault forensic evidence;
- Create DNA profiles when able; and
- Upload qualifying DNA profiles into CODIS.⁵⁷

The claimant asserts that in order to perform these activities, it was required to: employ a Program Manager to oversee the processing of additional sexual assault evidence kit tests within the police department's own lab; hire additional criminalists to process more tests; create and upload DNA profiles within mandated time limits; and budget for more materials to test the increased number of SAEKs in its lab.⁵⁸

The claimant alleges that under Penal Code section 680(c)(2)(B), it outsourced testing of SAEKs to a contract lab in order to process the kits within the 120-day timeline mandated by Penal Code section 680(c)(2)(A).⁵⁹ The claimant alleges that it had to first determine the number of untested SAEKs in its possession received by its crime lab on or after January 1, 2016, but does not specify any costs for this activity.⁶⁰ The claimant asserts that working with a contract lab creates

⁵² Exhibit A, Test Claim, filed December 31, 2020, page 23.

⁵³ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁵⁴ Exhibit A, Test Claim, filed December 31, 2020, page 9.

⁵⁵ Exhibit A, Test Claim, filed December 31, 2020, page 9.

⁵⁶ Exhibit A, Test Claim, filed December 31, 2020, page 9.

⁵⁷ Exhibit A, Test Claim, filed December 31, 2020, page 7.

⁵⁸ Exhibit A, Test Claim, filed December 31, 2020, page 7.

⁵⁹ Exhibit A, Test Claim, filed December 31, 2020, pages 7-8.

⁶⁰ Exhibit A, Test Claim, filed December 31, 2020, page 10.

additional external outsourcing costs and new internal costs.⁶¹ Internal costs are alleged to include processing of the evidence by the local agency’s criminalists for DNA profiles after the evidence is returned from the contract lab and investigative review of the tested evidence to determine if it impacts any ongoing or completed criminal investigation.⁶²

Total actual costs alleged by the claimant to perform these activities for the 2019-2020 fiscal year are \$116,138.95, broken down by the claimant as follows:⁶³

Activity	Date(s) Performed	Description	Cost
1) SAEK Outsourcing	1/01/2020-6/30/2020	Contract Lab Analysis	\$ 52,670.00
2) Lab/Police Personnel	1/01/2020-6/30/2020	Follow-Up Outsourcing	\$ 985.75
3) Program Manager	1/01/2020-6/30/2020	SAEK Evidence Management	\$ 62,483.20
Total			\$116,138.95

Total estimated costs alleged by the claimant to perform these activities for the 2020-2021 fiscal year are \$2,335,305.74, broken down by the claimant as follows:⁶⁴

Activity	Date(s) Performed	Description	Cost
1) SAEK Outsourcing	7/01/2020-6/30/2021	Contract Lab Analysis	\$ 214,855.00
2) Lab Personnel	7/01/2020-6/30/2021	Outsourcing	\$ 56,752.14
3) Program Manager	7/01/2020-6/30/2021	SEAK Evidence Management	\$ 124,996.40
4) New Lab Hires	7/01/2020-6/30/2021	Need for increased work	\$ 876,678.40
5) Police Personnel	7/01/2020-6/30/2021	Follow-Up Evidence Results	\$1,206,108.80
6) Consumables	7/01/2020-6/30/2021	Increased # SAEKs	\$ 70,800.00
Total			\$2,550,160.74

The claimant asserts that local agencies will be required to perform some, if not all, of the new activities alleged by the claimant, categorized as follows:

- Testing outsourced sexual assault evidence kits;
- Conducting internal administrative reviews of sexual assault evidence kits after receiving results from the outsourced lab;
- Purchasing additional materials to test sexual assault evidence kits (“consumables”);
- Additional lab personnel duties; and

⁶¹ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁶² Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁶³ Exhibit A, Test Claim, filed December 31, 2020, page 16.

⁶⁴ Exhibit A, Test Claim, filed December 31, 2020, page 17.

- Additional sworn police officer duties.⁶⁵

The claimant references the legislative history of the test claim statute to support its position that additional lab personnel are needed to perform the mandated activities.⁶⁶ The claimant states that DOJ, at the state level, anticipates receiving approximately 121 additional SAEKs annually as a result of the test claim statute and estimates it will need 3.0 new criminalists and 1.0 criminalist supervisors to complete the increased workload.⁶⁷ The claimant estimates that the City of San Diego will need to test an average of 118 additional SAEKs annually in its own crime lab to comply with the test claim statute.⁶⁸

According to the claimant, the test claim statute's legislative history also notes that the Los Angeles County Sheriff's Department anticipates hiring additional lab personnel to process the evidence in the time limits imposed by the test claim statute and increased costs of \$450,000 annually.⁶⁹ The claimant also contacted other law enforcement agencies and their labs throughout the state in order to estimate the increased costs that local agencies will incur to implement the mandate.⁷⁰ The claimant determined that costs will be unique to each agency, and will depend on how the agency previously handled SAEKs and whether they largely tested all kits prior to the mandate.⁷¹ The San Jose Police Department estimates new costs at \$100,000, whereas the San Diego County Sheriff's Department estimates costs in excess of \$300,000.⁷² Notably, unlike the claimant, neither of these agencies accounted for the cost of sworn investigators conducting follow-up investigations and making additional disclosures to prosecutors, which the claimant alleges are mandated activities.⁷³ Estimated costs for individual LEAs throughout the state range from \$100,000 to over \$2 million and may increase if additional staffing is needed or decrease if grant funding is made available.⁷⁴ The claimant's statewide cost estimate to implement the mandate is \$8 million.⁷⁵

The claimant, in its late rebuttal comments, disputes Finance's assertion that investigation costs are beyond the scope of the test claim.⁷⁶ The claimant argues that if it were not for the test claim

⁶⁵ Exhibit A, Test Claim, filed December 31, 2020, page 17.

⁶⁶ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁶⁷ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁶⁸ Exhibit A, Test Claim, filed December 31, 2020, page 12.

⁶⁹ Exhibit A, Test Claim, filed December 31, 2020, page 8.

⁷⁰ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁷¹ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁷² Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁷³ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁷⁴ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁷⁵ Exhibit A, Test Claim, filed December 31, 2020, page 18.

⁷⁶ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 1.

statute, the claimant's Sex Crimes Cold Case team would not exist.⁷⁷ Because the mandatory testing of all SAEKs resulted in new evidence, the claimant was forced to assign law enforcement personnel to solely investigate the impact of that new evidence on criminal investigations, instead of performing investigative duties in other essential areas, such as narcotics, robbery, or child abuse.⁷⁸ The claimant argues that regardless of the precise language of the test claim statute, the Legislature clearly intended that evidence obtained from testing *all* SAEKs would require law enforcement to investigate.⁷⁹

The claimant also disputes Finance's opposition to reimbursement for the personnel costs associated with the Program Manager position (Police Investigative Service Officer).⁸⁰ As a result of the processing duties under the test claim statute, the claimant, through the Police Investigative Service Officer position, must now either prepare hundreds of new SAEKs for testing, or handle, track, and package the kits for outsourcing, duties that were not required prior to the test claim statute.⁸¹ But for these new requirements, the Police Investigative Service Officer could perform other duties.⁸²

The claimant did not file comments on the Draft Proposed Decision.

B. Department of Finance

Finance contends that some of the activities the claimant alleges are reimbursable are not required by the test claim statute.⁸³ Finance groups the costs allegedly incurred by the claimant into three categories: outsourcing of sexual assault evidence kit testing, personnel, and lab consumables.⁸⁴

Finance does not dispute the claimant's assertion that outsourcing the testing of backlogged SAEKs and purchasing additional testing materials are mandated reimbursable activities under the test claim statute.⁸⁵ Rather, Finance's challenge is limited to select personnel costs relating

⁷⁷ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, pages 1-2.

⁷⁸ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

⁷⁹ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

⁸⁰ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

⁸¹ Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

⁸² Exhibit C, Claimant's Late Rebuttal Comments, filed May 7, 2021, page 2.

⁸³ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

⁸⁴ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

⁸⁵ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, pages 2-3. Notably, both the claimant and the Department of Finance use "outsourcing" and "transmitting" interchangeably when referring to the option under section 680(c)(2)(B) for the crime lab to transmit sexual assault forensic evidence to a different crime lab for DNA processing in lieu of processing the evidence itself.

to staffing increases and new workload activities that the claimant alleges are required to comply with the test claim statute.⁸⁶

Finance does not dispute the claimant's assertion that the following new duties, as fulfilled by the DNA Technical Manager, are required by the test claim statute: overseeing the technical aspects of the outsourcing contract, including receiving and analyzing data and reviewing case work and reports from the contracted private lab; and verifying and preparing any DNA profiles identified by the contracted private lab.⁸⁷ Finance also does not dispute the claimant's allegation that because it will be required to test approximately 118 new SAEKs annually in its own lab beginning January 1, 2020, four new criminalist positions are necessary.⁸⁸

However, Finance challenges the claimant's alleged need to create the Police Investigative Service Officer position, with costs of \$62,483 in fiscal year 2019-2020 and \$124,996 in 2020-2021.⁸⁹ Finance argues that contrary to the claimant's assertion, the test claim statute neither requires such a position nor the referenced administrative duties of tracking, processing, and managing the SAEKs within the claimant's crime lab.⁹⁰

Finance also contests the assertion that the creation of the Police Department's Sex Crimes Cold Case Team, with costs of \$1,206,109 in fiscal year 2020-2021, is mandated by the test claim statute.⁹¹ The Sex Crimes Cold Case Team is comprised of one sergeant and two detectives tasked with performing follow-up investigative work on new evidence from previously untested SAEKs.⁹² Finance argues that the claimant's assertion that follow-up investigations are required under Penal Code section 680(c)(2)(B) is incorrect.⁹³ Penal Code section 680(c)(2)(A) and (c)(2)(B), which form the basis for the test claim, pertain to the requirements for processing sexual assault forensic evidence.⁹⁴ Neither subdivision specifies that investigative work related to newly uncovered sexual assault evidence resulting from that processing is also required.⁹⁵ Furthermore, Finance maintains, because the police officers were already performing investigative work, modification of those duties to focus on sex crime cold cases is not a new or higher level of service and is beyond the scope of the test claim statute.⁹⁶

Finance did not file comments on the Draft Proposed Decision.

⁸⁶ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

⁸⁷ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

⁸⁸ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

⁸⁹ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

⁹⁰ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 2.

⁹¹ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

⁹² Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

⁹³ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

⁹⁴ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

⁹⁵ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

⁹⁶ Exhibit B, Finance's Comments on the Test Claim, filed March 29, 2021, page 3.

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.”⁹⁷ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁹⁸

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.⁹⁹
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.¹⁰⁰
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.¹⁰¹
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.¹⁰²

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

⁹⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁹⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁹⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹⁰⁰ *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).

¹⁰¹ *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.

¹⁰² *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.

Constitution.¹⁰³ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹⁰⁴ 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.”¹⁰⁵

A. The Test Claim Was Timely Filed.

Government Code section 17551(c) requires that a test claim be filed “not later than 12 months after the effective date of the 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.¹⁰⁶ Government Code section 17557(e) requires a test claim to be submitted by June 30 following a fiscal year in order to establish reimbursement eligibility for that fiscal year.

The test claim statute became effective on January 1, 2020.¹⁰⁷ The claimant filed the Test Claim on December 31, 2020, exactly 365 days after the test claim statute’s effective date. The Test Claim was therefore timely filed.

Because the Test Claim was filed on December 31, 2020, under Government Code 17557, the potential period of reimbursement would begin on July 1, 2019. However, because the Test Claim statute has a later effective date, the period of reimbursement begins on the statute’s effective date, January 1, 2020.

B. Penal Code Section 680(c)(1) and (2), as Amended by Statutes 2019, Chapter 588, Imposes a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.

As described below, the Commission finds that Penal Code section 680(c)(1) and (2), as amended by the test claim statute (Stats. 2019, ch. 588), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

¹⁰³ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

¹⁰⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹⁰⁵ *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).

¹⁰⁶ California Code of Regulations, title 2, section 1183.1(c).

¹⁰⁷ Statutes 2019, chapter 588.

1. Penal Code Section 680(c)(1) and (2), as Amended by the Test Claim Statute, Imposes a State-Mandated Program on County and City Law Enforcement Agencies.

- a. Penal Code section 680(c)(1) and (2) impose new requirements on law enforcement agencies to submit all sexual assault forensic evidence received on or after January 1, 2016 to a crime lab for processing and uploading qualifying DNA into CODIS.

The plain language of Penal Code section 680(c)(1), as amended by Statutes 2019, chapter 588, now requires law enforcement agencies in whose jurisdiction a specified sex offense occurs to either submit all sexual assault forensic evidence received on or after January 1, 2016 to the crime lab, or ensure that a rapid turnaround DNA agreement is in place so that forensic evidence collected from the victim of a sexual assault is submitted directly from the medical facility where the victim is examined to the crime lab. The plain language of Penal Code section 680(c)(2), as amended by Statutes 2019, chapter 588, now requires crime labs to either conduct DNA testing of all sexual assault forensic evidence received on or after January 1, 2016, or transmit the evidence to another crime lab for processing, and to upload qualifying DNA profiles into CODIS, all within specified time limits. Prior to the test claim statute, these activities and the corresponding deadlines were encouraged, but not required. The test claim statute amended Penal Code section 680(c)(1) and (c)(2) to change the “should” to “shall” as follows:

(c) In order to ensure that sexual assault forensic evidence is analyzed within the two-year timeframe required by subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of Section 803 and to ensure the longest possible statute of limitations for sex offenses, including sex offenses designated pursuant to those subparagraphs, the following ~~should~~ shall occur:

(1) A law enforcement agency in whose jurisdiction a sex offense specified in Section 261, 261.5, 262, 286, 287, or 289 or former Section 288a occurred ~~should~~ shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

(A) Submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence.

(B) Ensure that a rapid turnaround DNA program is in place to submit forensic evidence collected from the victim of a sexual assault directly from the medical facility where the victim is examined to the crime lab within five days after the evidence is obtained from the victim.

(2) The crime lab ~~should~~ shall do one of the following for any sexual assault forensic evidence received by the crime lab on or after January 1, 2016.

(A) Process sexual assault forensic evidence, create DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initially receiving the evidence.

(B) Transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially

receiving the evidence, for processing of the evidence for the presence of DNA. If a DNA profile is created, the transmitting crime lab shall upload the profile into CODIS as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA.

The legislative history makes clear that that the purpose of these amendments was to require DNA testing on all sexual assault forensic evidence kits (SAEKs) within existing time frames because a number of law enforcement agencies throughout the state were not adhering to the recommended time limits for processing sexual assault forensic evidence collected after an alleged assault, leading to a growing concern over a backlog of untested SAEKs.¹⁰⁸

Thus, the following activities imposed by Penal Code section 680(c)(1) and (2) are newly required by the state:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 288a occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - a. Submit sexual assault forensic evidence to the crime lab within 20 days after booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)
2. For any sexual assault forensic evidence received by the crime lab on or after January 1, 2016, the crime lab shall do one of the following:
 - a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence.¹⁰⁹ (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

¹⁰⁸ Exhibit E, Senate Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), December 3, 2018, page 5.

¹⁰⁹ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 3. The courts will give weight and appropriate deference to the interpretation of a statute by the agency charged

It is clear from the plain language of Penal Code section 680(c)(1) that law enforcement agencies in whose jurisdiction specified sex offenses occurred are required to submit the sexual assault forensic evidence to a crime lab. However, under subdivision (c)(2), “the crime lab” is required to process the sexual assault forensic evidence received from the law enforcement agency or medical facility (under the rapid turnaround DNA agreement) or transmit the evidence to another crime lab, and to upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence. As indicated below, there are public crime labs run by the state and local agencies, and private labs that contract with law enforcement to process and test forensic evidence. It is not clear from the plain language of the statute whether the overall duty to process and test the evidence and upload any qualifying DNA profiles to CODIS is ultimately the responsibility of “the crime lab” or the law enforcement agency. Thus, further interpretation is required.

While neither the original statute nor the enacting bill analyses mention crime labs, the legislative history of Penal Code section 680, read within the context of other Penal Code statutes, evidences an intent that the duties created by the Sexual Assault Victims’ DNA Bill of Rights, including those in subdivision (c)(2), be imposed on law enforcement agencies only.

DOJ has interpreted the test claim statute’s requirements as being imposed on law enforcement agencies and *public* crime labs.¹¹⁰ This is consistent with Penal Code section 297(a), which provides in pertinent part:

[O]nly the following laboratories are authorized to analyze crime scene samples and other forensic identification samples of known and unknown origin and to upload and compare those profiles against state and national DNA and forensic identification databanks and databases in order to establish identity and origin of samples for forensic identification purposes pursuant to this chapter:

- (1) The DNA laboratories of the Department of Justice that meet state and federal requirements, including the Federal Bureau of Investigation (FBI) Quality Assurance Standards, and that are accredited by an organization approved by the National DNA Index System (NDIS) Procedures Board.
- (2) Public law enforcement crime laboratories designated by the Department of Justice that meet state and federal requirements, including the FBI Quality Assurance Standards, and that are accredited by an organization approved by the NDIS Procedures Board.
- (3) Only the laboratories of the Department of Justice that meet the requirements of paragraph (1) of subdivision (a) are authorized to upload DNA profiles from arrestees and other qualifying offender samples collected pursuant to this section, Section 296, and Section 296.2.

Section 297(b) authorizes state and local law enforcement public crime labs to contract with private forensic laboratories to process evidence, as long as the private labs meet state and

with its implementation. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.)

¹¹⁰ Exhibit E, California Department of Justice, Sexual Assault Kits and Evidence FAQs, <https://oag.ca.gov/bfs/prop69/faqs-sake> (accessed on February 26, 2021), page 1.

federal requirements, including the FBI Quality Assurance Standards, and are accredited by an organization approved by the NDIS Procedures Board. However, the state or local public crime lab is required by section 297(b) to “conduct the quality assessment and review required by the FBI Quality Assurance Standards” prior to uploading DNA profiles generated by a private lab.¹¹¹ Thus, under this statute, state and local law enforcement public crime labs have the duty to ensure that the DNA profiles are properly processed and comply with FBI standards for DNA.

Under the rules of statutory construction, it is presumed the Legislature has existing laws in mind when it enacts new statutes.¹¹² Thus, when the Legislature used the phrase “crime lab” in Penal Code section 680, and required the crime lab to process the sexual assault forensic evidence received from the law enforcement agency or medical facility or transmit the evidence to another crime lab, and to upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence, it was imposing the duty on the state and local law enforcement agencies.

This interpretation is also consistent with the legislative history of Penal Code section 680. According to the Assembly Committee on Appropriations analysis, the purpose of Penal Code section 680, as originally enacted, was to “give rape victims the ability to follow their own cases *so that they can urge law enforcement to test the evidence* and determine if the suspect can be located. This right is similar to other victim's rights, such as the right to be notified of court dates, parole dates, and the disposition of cases.”¹¹³ As discussed above, in passing the Sexual Assault Victims’ DNA Bill of Rights, the Legislature found and declared that “[l]aw enforcement agencies have an obligation to victims of sexual assaults *in the proper handling, retention, and timely DNA testing* of rape kit evidence or other crime scene evidence and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.”¹¹⁴

Notably, Penal Code section 680 as originally enacted encouraged law enforcement agencies *only*, not crime labs, to perform DNA testing of sexual assault forensic evidence.

(b)(6) A law enforcement agency assigned to investigate a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289 *should perform DNA testing of rape kit evidence or other crime scene evidence* in a timely manner in order to assure the longest possible statute of limitations, pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.¹¹⁵

The original language of subdivision (d) also refers to analysis of DNA evidence as the law enforcement agency’s responsibility.

(d) *If the law enforcement agency elects not to analyze DNA evidence* within the time limits established by subparagraphs (A) and (B) of paragraph (1) of

¹¹¹ Penal Code section 297, last amended by Statutes 2006, chapter 170.

¹¹² *Keeler v. Superior Court* (1970) 2 Cal.3d 619, 625; *Arthur Anderson v. Superior Court* (1998) 67 Cal.App.4th 1481, 1499.

¹¹³ Exhibit E, Assembly Committee on Appropriations, Analysis of AB 898 (2003-2004 Reg. Sess.), as introduced February 20, 2003, page 2, emphasis added.

¹¹⁴ Penal Code section 680(b)(4), as added by Statutes 2003, chapter 537, emphasis added.

¹¹⁵ Penal Code section 680(b)(6), as added by Statutes 2003, chapter 537, emphasis added.

subdivision (i) of Section 803, a victim of a sexual assault offense specified in Section 261, 261.5, 262, 286, 288a, or 289, where the identity of the perpetrator is in issue, shall be informed, either orally or in writing, of that fact by the law enforcement agency.¹¹⁶

Importantly, in describing the legal remedies available to sexual assault victims for a violation of Penal Code section 680, the statute since its enactment has referred only to a law enforcement agency's duty to provide notice when failing to timely analyze DNA evidence or intending to destroy or dispose of sexual assault forensic evidence from an unsolved sexual assault case.¹¹⁷

The sole civil or criminal remedy available to a sexual assault victim *for a law enforcement agency's failure to fulfill its responsibilities* under this section is standing to file a writ of mandamus to require compliance with subdivision (e) or (f).¹¹⁸

By contrast, there is no separate remedy available to a sexual assault victim for a crime lab's failure to comply with the requirements of Penal Code section 680.

The term "crime lab" was added to Penal Code section 680 by Statutes 2014, chapter 874 (AB 1517) which amended the section by bifurcating law enforcement's responsibility to timely "analyze DNA evidence" into specific tasks to be separately performed by "a law enforcement agency" and "the crime lab."¹¹⁹ While the bill analyses for AB 1517 do not directly discuss why Penal Code section 680 was changed in this manner, they do indicate that DOJ played a significant role in testing and analyzing sexual assault forensic evidence statewide. According to the Senate Appropriations Committee analysis of AB 1517, costs to comply with the DNA testing guidelines would be incurred by crime labs at both the state and local level, with DOJ handling crime lab functions for 46 counties (representing 25% of the state population), the Los Angeles Crime Lab processing 30 percent of cases statewide, and the remaining counties accounting for 45 percent of cases.¹²⁰

California's public crime lab system is comprised of state, county, and city level entities.¹²¹ DOJ, through its Bureau of Forensic Services, serves 46 of the state's 58 counties through its

¹¹⁶ Statutes 2003, chapter 537, emphasis added.

¹¹⁷ Penal Code section 680(e), (f).

¹¹⁸ Penal Code section 680(k), emphasis added. This provision was originally contained in subdivision (j) and referenced subdivisions (d) and (e), which were changed to (e) and (f) following renumbering. Statutes 2003, chapter 537.

¹¹⁹ Statutes 2014, chapter 874, emphasis added.

¹²⁰ Exhibit E, Senate Appropriations Committee, Analysis of AB 1517 (2013-2014 Reg. Sess.), as amended May 23, 2014, page 1.

¹²¹ Exhibit E, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, page 4.

regional and specialized crime labs.¹²² Rural and inland areas of the state tend to be served by state-run labs, whereas more populous urban regions are generally served by county-run labs, or a combination of county- and city-run labs.¹²³ Notably, “[e]ach jurisdiction is served by only one primary forensic laboratory for any given type of testing.”¹²⁴

According to DOJ, DNA analysis is performed at 18 public crime labs,¹²⁵ seven of which are state-run labs,¹²⁶ with the remaining 11 consisting of county- and city-run labs.¹²⁷ DNA analysis may also be outsourced to accredited private labs in California or other states.¹²⁸

While private labs are used by California law enforcement agencies in a significant portion of DNA cases,¹²⁹ there is no indication in either the language or legislative history of Penal Code section 680, or in other provisions of the Penal Code, that the Legislature intended to impose the responsibility to conduct DNA processing on private crime labs. The statute since its enactment has referred to law enforcement’s obligation to victims of sexual assaults in the proper handling, retention and timely DNA testing of rape kit evidence or other crime scene evidence.¹³⁰

Taken as a whole, the duties imposed by Penal Code section 680(c)(1) and (2) are ultimately a law enforcement responsibility. This conclusion is further supported by the general rule that California counties and cities “have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction.”¹³¹

¹²² Exhibit E, California Department of Justice, Bureau of Forensic Services Brochure, September 2019, page 1.

¹²³ Exhibit E, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, pages 4-5.

¹²⁴ Exhibit E, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, page 2.

¹²⁵ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Kits, 2020 Report to the Legislature, page 3.

¹²⁶ Exhibit E, California Department of Justice, Bureau of Forensic Services Brochure, September 2019, page 2.

¹²⁷ Exhibit E, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, pages 6-9.

¹²⁸ Exhibit E, California Department of Justice, Statewide Audit of Untested Sexual Assault Forensic Kits, 2020 Report to the Legislature, page 3.

¹²⁹ Exhibit E, Excerpts from California Department of Justice, 2003 California Task Force on Forensic Services Force Report, August 2003, page 3.

¹³⁰ Penal Code section 680, Statutes 2003, chapter 537.

¹³¹ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367. Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the

- b. The test claim statute does not require law enforcement agencies to conduct follow-up investigations.

The claimant also seeks reimbursement for the cost of employing one police sergeant and two police detectives to conduct follow-up investigations on the previously untested and outsourced SAEKs.¹³² These costs form the bulk of the claimant’s total estimated costs for the 2020-2021 fiscal year.¹³³ The claimant states that law enforcement officers are required to take any number of actions after receiving new evidence related to any criminal investigation, and therefore, conducting follow-up investigations on any new evidence resulting from the mandated DNA testing is necessary.¹³⁴

Conducting investigations on new evidence resulting from the mandated testing requirement is not required by the plain language of the test claim statute. Investigation for future criminal charges and prosecution is within local district attorney and law enforcement existing duties and prosecutorial discretion, and is therefore not state mandated.¹³⁵ Furthermore, any duties law enforcement agency personnel may have upon discovering new evidence impacting prior or ongoing criminal proceedings exist independently and outside the scope of the test claim statute. The Commission finds that conducting follow-up investigations is not required by the test claim statute and is, therefore, not eligible for reimbursement.

- c. The test claim statute imposes a state-mandated program on counties and cities, but does not impose a state-mandated program on K-12 school districts or community college districts.

The plain language of the test claim statute imposes requirements on law enforcement agencies in whose jurisdiction specified sex offenses occur. On its face, this would appear to include county and city law enforcement agencies, as well as the law enforcement agencies of K-12 school districts and community college districts, as authorized by Education Code sections 38000 and 72330.¹³⁶ As indicated above, California counties and cities “have as an ordinary,

State for: (1) the constitution, regulation, and government of the city police force” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

¹³² Exhibit A, Test Claim, filed December 31, 2020, pages 13-14; Exhibit C, Claimant’s Late Rebuttal Comments, filed May 7, 2021, pages 1-2.

¹³³ Exhibit A, Test Claim, filed December 31, 2020, page 23.

¹³⁴ Exhibit A, Test Claim, filed December 31, 2020, pages 13-15.

¹³⁵ Government Code sections 26500, 26501; *Gananian v. Wagstaffe* (2011) 199 Cal.App.4th 1532, 1543 (Although codified by statute, the principle of prosecutorial discretion is rooted in the separation of powers and due process clauses of the California Constitution, and is basic to the state’s criminal justice system); *People v. Eubanks* (1996) 14 Cal.4th 580, 589 (prosecutorial discretion extends from the investigation and gathering of evidence relating to criminal offenses, through the crucial decisions of whom to charge and what charges to bring).

¹³⁶ Education Code sections 38000 and 72330, authorize school districts and community college districts, respectively, to establish school police departments and employ peace officers.

principal, and mandatory duty the provision of policing services within their territorial jurisdiction.”¹³⁷ However, because K-12 school districts and community college districts are permitted but not required by state law to have police departments and employ peace officers, they are not legally compelled to comply with the activities required by Penal Code section 680(c)(1) and (2).

The courts have made clear that activities required by state law, but triggered by a local discretionary decision (that is, action undertaken without any legal compulsion from the state or threat of penalty for nonparticipation) do not result in a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.¹³⁸ In *Department of Finance v. Commission on State Mandates (POBRA)*, the court addressed legislation that provided procedural protections to peace officers employed by counties, cities, and school districts when a peace officer employee is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The court specifically held that “school districts . . . that are permitted by statute [i.e., Education Code sections 38000 and 72330], but not required, to employ peace officers who supplement the general law enforcement units of cities and counties” are not eligible to claim reimbursement under article XIII B, section 6 for the new activities required by the state because school districts and community college districts are not legally or practically compelled by state law to comply.¹³⁹ The court reasoned that unlike cities and counties,¹⁴⁰ school districts and community college districts do not have the provision of police protection as an essential and basic function, and instead make a

¹³⁷ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367. Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

¹³⁸ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 742; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1363.

¹³⁹ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357-1367.

¹⁴⁰ Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that “It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force” Government Code section 36501 further provides that “[t]he government of a general law city is vested in: . . . (d) A chief of police.”

discretionary decision to form a police department and employ peace officers pursuant to statutory authority:

The Commission notes that *Carmel Valley Fire Protection Dist. v. State* characterizes police protection as one of “the most essential and basic functions of local government.” [Citation omitted.] However, that characterization is in the context of cities, counties, and districts that have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction. A fire protection district perform must hire firefighters to supply that protection.

Thus, as to cities, counties, and such districts, new statutory duties that increase the costs of such services are prima facie reimbursable. This is true, notwithstanding a potential argument that such a local government’s discretionary decision is voluntary in part, as to the number of personnel it hires. (See *San Diego Unified School Dist., supra*, 33 Cal.4th at p. 888. . . .) A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some “discretionary” expulsions will necessarily occur. [Citation to *San Diego Unified School Dist.* omitted.] Accordingly, *San Diego Unified School Dist.* suggests additional costs of “discretionary” expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary under the rationale of *City of Merced*. [Citation to *San Diego Unified School Dist.* omitted.]

However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.¹⁴¹

As discussed above, the duties under Penal Code section 680(c)(1) and (2) are imposed on law enforcement agencies, including the law enforcement agencies of K-12 school districts and community college districts in whose jurisdiction specified sex offenses occur. As recognized by the court in *POBRA*, however, K-12 school districts and community college districts are authorized, but not required, to have police departments and employ peace officers. Police protection is not a basic or essential function of K-12 school districts and community college districts. Thus, since K-12 school districts and community college districts are not legally compelled to have police departments, the legal duty to comply with the activities required by Penal Code section 680(c)(1) and (2) is imposed as a result of their own discretionary decisions to have police departments and employ peace officers and is not mandated by the State. Moreover, there is no evidence in the record that K-12 school districts or community college districts are practically compelled to have police departments.

¹⁴¹ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1367-1368.

Accordingly, the Commission finds that the test claim statute imposes a state-mandated program on counties and cities, but does not impose a state-mandated program on K-12 school districts and community college districts. K-12 school districts and community college districts are therefore not eligible to claim reimbursement for this program.

2. Penal Code section 680(c)(1) and (2), as Amended by the Test Claim Statute, Imposes a New Program or Higher Level of Service.

For the test claim statute to be subject to subvention pursuant to article XIII B, section 6 of the California Constitution, the statute must impose a new program or higher level of service. A new program or higher level of service is defined as a program that carries out the governmental function of providing services to the public, or, in implementing a state policy, imposes unique requirements on local government that do not apply generally to all residents and entities in the state.

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.*¹⁴²

The court further held 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 for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.”¹⁴³

As indicated above, the state-mandated activities are newly imposed on county and city law enforcement agencies and are unique to government. Providing police services and protection to the public is a core governmental function.¹⁴⁴ Moreover, the mandated activities relating to the testing sexual assault forensic evidence provide a peculiarly governmental service to the public. In passing the Sexual Assault Victims’ DNA Bill of Rights, the Legislature found and declared that “[t]imely DNA analysis of rape kit evidence is a core public safety issue affecting men, women, and children in the State of California. It is the intent of the Legislature, in order to further public safety, to encourage DNA analysis of rape kit evidence within the time limits

¹⁴² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis added.

¹⁴³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57, emphasis added.

¹⁴⁴ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537 (Police protection is one “of the most essential and basic functions of local government.”); *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

imposed by subparagraphs (A) and (B) of paragraph (1) of subdivision (i) of Section 803.”¹⁴⁵ Furthermore, the test claim statute aims to “to ensure that survivors of rape have equal access to justice by promptly testing all rape kits collected after an assault.”¹⁴⁶

3. Penal Code Section 680(c)(1) and (2), as Amended by the Test Claim Statute, Results in Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

In order to be reimbursable, the mandated activities must also result in increased costs mandated by the state. Article XIII B, section 6 of the California Constitution and Government Code section 17561(a) require reimbursement for all 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. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The claimant alleges that it has incurred increased costs of \$116,139 to comply with the mandated new program or higher level of service in fiscal year 2019-2020 as follows:¹⁴⁷

Activity	Date(s) Performed	Description	Cost
1) SAEK Outsourcing	1/01/2020-6/30/2020	Contract Lab Analysis	\$ 52,670.00
2) Lab/Police Personnel	1/01/2020-6/30/2020	Follow-Up Outsourcing	\$ 985.75
3) Program Manager	1/01/2020-6/30/2020	SAEK Evidence Management	\$ 62,483.20
Total			\$116,138.95

The claimant supports these assertions with invoices,¹⁴⁸ a contract between the claimant and the outsourced crime lab,¹⁴⁹ a hiring memorandum pertaining to the criminalist positions,¹⁵⁰ an itemized spreadsheet of consumable costs,¹⁵¹ and a declaration from Jeffrey Jordon, Captain of

¹⁴⁵ Penal Code section 680(b)(5), as added by Statutes 2003, chapter 537. “Subdivision (i) of Section 803” was later changed to “subdivision (g) of Section 803” to reflect renumbering of that law. See Penal Code section 680(b)(6), as amended by Statutes 2014, chapter 874.

¹⁴⁶ Exhibit E, Assembly Committee on Public Safety, Analysis of SB 22 (2019-2020 Reg. Sess.), as amended May 17, 2019, page 3.

¹⁴⁷ Exhibit A, Test Claim, filed December 31, 2020, page 16.

¹⁴⁸ Exhibit A, Test Claim, filed December 31, 2020, pages 83-105.

¹⁴⁹ Exhibit A, Test Claim, filed December 31, 2020, pages 56-82.

¹⁵⁰ Exhibit A, Test Claim, filed December 31, 2020, pages 106-108.

¹⁵¹ Exhibit A, Test Claim, filed December 31, 2020, pages 109-110. The claimant defines “consumables” as “materials needed to test the sexual assault evidence kits,” not the materials that make up the kits themselves. Exhibit A, Test Claim, filed December 31, 2020, page 7.

the City of San Diego Policy Department.¹⁵² While the claimant alleges that Penal Code section 680(c)(1) mandates new activities, the claimant asserts that costs stemming from those new activities are de minimis and therefore has not identified them.¹⁵³

The record contains sufficient evidence that the claimant's costs to comply with the mandated new program or higher level of service for fiscal year 2019-2020 exceed \$1,000.

Additionally, none of the exceptions specified in Government Code section 17556 apply to this claim. No State funds have been specifically appropriated to fund this program. In fact, the initial draft of the test claim statute included a direct appropriation of \$2 million from the General Fund to DOJ to assist local law enforcement agencies with complying with the new testing requirements, but that language was eventually removed.¹⁵⁴ There are, however, several state and federal grant programs and other funding sources that may be used by a claimant to pay for the mandated activities in this program and for other criminal justice programs. These include, but are not limited to:

- Citizens Option for Public Safety Grant (COPS) (state)
- DNA Capacity Enhancement and Backlog Reduction Program (federal)
- DNA Identification Fund (state)
- Sexual Assault Evidence Submission Grant Program (state)

There is nothing in the law, however, that requires the above-described funding sources to be mandatory offsets and there is no evidence that they are sufficient to fully fund the costs of the program. Therefore, the Commission finds that there are costs mandated by the state. The identified funding sources, above, will be identified as potential offsetting revenues in the Parameters and Guidelines.

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim and finds that Penal Code section 680(c), as amended by Statutes 2019, chapter 588, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, and requires city and county law enforcement agencies to perform the following mandated activities beginning January 1, 2020:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 288a occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:

Under Penal Code section 13823.14(d), “[e]very local and state agency shall remain responsible for its own costs in purchasing a standardized sexual assault forensic medical evidence kit.”

¹⁵² Exhibit A, Test Claim, filed December 31, 2020, pages 21-24.

¹⁵³ Exhibit A, Test Claim, filed December 31, 2020, page 9.

¹⁵⁴ Exhibit A, Test Claim, filed December 31, 2020, page 42.

- a. Submit sexual assault forensic evidence to the crime lab within 20 days after booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)
2. For any sexual assault forensic evidence received on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:
- a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence. (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed and supported by evidence in the record by the claimant for inclusion in the Parameters and Guidelines pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5, *with the exception* of conducting follow-up investigations on evidence tested pursuant to the test claim statute, which the Commission finds is not a reimbursable activity.

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 July 23, 2021, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued July 23, 2021**
- **Decision adopted July 23, 2021**

Sexual Assault Evidence Kits: Testing, 20-TC-01

Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22)

City of San Diego, 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 July 23, 2021 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/23/21

Claim Number: 20-TC-01

Matter: Sexual Assault Evidence Kits: Testing

Claimant: City of San Diego

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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July 23, 2021

Captain Jeffrey Jordon
City of San Diego
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and
Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing
Sexual Assault Evidence Kits: Testing, 20-TC-01
Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22)
City of San Diego, Claimant

Dear Captain Jordon and Ms. Sidarous:

On July 23, 2021, the Commission on State Mandates (Commission) adopted the Decision partially approving the Test Claim on 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 reimbursement 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 1183.9, Commission staff has expedited the parameters and guidelines process by preparing Draft Expedited Parameters and Guidelines to assist the claimant. The proposed reimbursable activities have been limited to those approved in the Decision by the Commission. Reasonably necessary activities to perform the mandated activities may be proposed by the parties. (Cal. Code Regs., tit. 2, §1183.7(d).) "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program (Cal. Code Regs., tit. 2, §1183.7(d).) Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of the Commission's regulations.

Review of Draft Expedited Parameters and Guidelines

Proposed modifications and comments may be filed on the Draft Expedited Parameters and Guidelines no later than **5:00 pm on August 13, 2021**. (Cal. Code Regs., tit. 2, §1183.9(b).) 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

Rebuttals

Written rebuttals may be filed within 15 days of service of comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Draft Proposed Decision and Parameters and Guidelines

If there are no substantive comments filed by the comment deadline, then no Draft Proposed Decision will be prepared or issued for comment and the matter will be set for the next regularly scheduled hearing, pursuant to section 1183.9(d) of the Commission's regulations. If substantive comments are filed, Commission staff will review the Draft Expedited Parameters and Guidelines, comments, and any rebuttals and will prepare a Draft Proposed Decision and Parameters and Guidelines, which will be issued for comment.

Alternative Process: Joint 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 decision on a test claim, the test claimant 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 1183.11 of the Commission's regulations to develop a *joint 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 written notification shall provide all information and filing dates as specified in Government Code section 17557.1(a).

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 concerning the draft

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.

reasonable reimbursement methodology and proposed statewide estimate of costs within 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 10 days prior to the next hearing, Commission staff shall review comments and rebuttals and issue 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.

Alternative Process: Reasonable Reimbursement Methodology Proposed for Inclusion in Parameters and Guidelines

Government Code section 17518.5 provides a process for a reasonable reimbursement methodology to be proposed by the Department of Finance, the State Controller, an affected state agency, the claimant, or an interested party for inclusion in the parameters and guidelines of an amendment to parameters and guidelines. In this context, Government Code section 17518.5 defines “reasonable reimbursement methodology” as a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514 which shall:

- Be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- Consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner, and
- Whenever possible, be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

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 prior 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.

Captain Jordon and Ms. Sidarous
July 23, 2021
Page 4

Hearing

The Proposed Decision and Parameters and Guidelines for this matter are tentatively set for hearing on **Friday, December 3, 2021**, but may be heard on September 24, 2021 at 10:00 a.m. if no substantive comments are filed by the comment deadline.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Penal Code Section 680 as Amended by

Statutes 2019, Chapter 588 (SB 22)

Sexual Assault Evidence Kits: Testing

20-TC-01

Period of reimbursement begins January 1, 2020

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address state-mandated activities arising from Statutes 2019, chapter 588 (SB 22), which amended Penal Code section 680 to require law enforcement agencies to perform specified activities relating to DNA testing of sexual assault forensic evidence within specified time periods.

On July 23, 2021, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, and requires city and county law enforcement agencies to perform the following mandated activities beginning January 1, 2020:

1. A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 288a occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - a. Submit sexual assault forensic evidence to the crime lab within 20 days after booked into evidence; *or*
 - b. Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)
2. For any sexual assault forensic evidence received on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:

¹ Tentative. If substantive comments are received on the Draft Expedited Parameters and Guidelines, a Draft Proposed Decision and Parameters and Guidelines will be prepared and issued for comment and this matter will instead be set for the December 3, 2021 hearing.

- a. Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
- b. Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120 days after the transmitting crime lab initially receives the evidence. (Penal Code 680(c)(2), Stats. 2019, ch. 588.)

The Commission further concluded that the test claim statute does not mandate city and county law enforcement agencies to conduct follow-up investigations on evidence tested pursuant to the test claim statute.

II. ELIGIBLE CLAIMANTS

Any city, county, or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on December 31, 2020, establishing eligibility for reimbursement for the 2019-2020 fiscal year. However, the effective date of the test claim statute is January 1, 2020. Therefore, costs incurred are reimbursable on or after January 1, 2020.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

- A law enforcement agency in whose jurisdiction a sex offense specified in Penal Code sections 261, 261.5, 262, 286, 287, or 289 or former section 288a occurred shall do one of the following for any sexual assault forensic evidence received by the law enforcement agency on or after January 1, 2016:
 - Submit sexual assault forensic evidence to the crime lab within 20 days after booked into evidence; *or*
 - Ensure that a rapid turnaround DNA program is in place (with a written agreement between the law enforcement agency, the crime lab, and the medical facility pursuant to Penal Code section 680(c)(5)) to submit sexual assault forensic evidence directly from the medical facility examining the victim to the crime lab within five days. (Penal Code 680(c)(1), Stats. 2019, ch. 588.)
- For any sexual assault forensic evidence received on or after January 1, 2016, the law enforcement's crime lab shall do one of the following:
 - Process sexual assault forensic evidence, creating DNA profiles when able, and upload qualifying DNA profiles into CODIS as soon as practically possible, but no later than 120 days after initial receipt; *or*
 - Transmit sexual assault forensic evidence to another crime lab for DNA processing as soon as practically possible, but no later than 30 days after initial receipt. The transmitting crime lab shall upload into CODIS any qualifying DNA profiles from sexual assault forensic evidence as soon as practically possible, but no longer than 30 days after being notified about the presence of DNA and no later than 120

days after the transmitting crime lab initially receives the evidence.
(Penal Code 680(c)(2), Stats. 2019, ch. 588.)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of

the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV., of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3., Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, other state funds, and other funds that are not the claimant's proceeds of taxes shall be identified and deducted from this claim. This includes, but is not limited to, the following state and federal grant programs that may be used by a claimant to pay for the mandated activities in this program:

- Citizens Option for Public Safety Grant (COPS) (state)
- DNA Capacity Enhancement and Backlog Reduction Program (federal)
- DNA Identification Fund (state)
- Sexual Assault Evidence Submission Grant Program (state)

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

² This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

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 July 23, 2021, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued July 23, 2021**
- **Decision adopted July 23, 2021**

Sexual Assault Evidence Kits: Testing, 20-TC-01

Penal Code Section 680 as Amended by Statutes 2019, Chapter 588 (SB 22)

City of San Diego, 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 July 23, 2021 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: 7/23/21

Claim Number: 20-TC-01

Matter: Sexual Assault Evidence Kits: Testing

Claimant: City of San Diego

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.)

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