BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM Welfare and Institutions Code Section 625.6, As Amended by Statutes 2020, Chapter 335 (SB 203) Filed on December 22, 2021 County of Los Angeles, Claimant	Case No.: 21-TC-01 *Juveniles: Custodial Interrogation* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 27, 2023*) (*Served January 31, 2023*)

TEST CLAIM

The Commission on State Mandates adopted the attached Decision on January 27, 2023.

Heather Halsey, Executive Director

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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during regularly scheduled hearings on December 2, 2022, and January 27, 2023. Fernando Lemus and Lucia Gonzalez appeared on behalf of the County of Los Angeles (claimant). Chris Hill appeared on behalf of the Department of Finance (Finance).

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Revised Proposed Decision to approve the Test Claim by a vote of 7-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Lynn Paquin, Representative of the State Controller, Vice Chairperson	Yes
Spencer Walker, Representative of the State Treasurer	Yes

Summary of the Findings

This Test Claim addresses Statutes 2020, chapter 335, which amended Welfare and Institutions Code section 625.6, effective January 1, 2021, to provide that "a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference" "[p]rior to a custodial interrogation, and before the waiver of any Miranda rights." The section prohibits the youth from waiving this consultation.[1] Additionally, section 625.6 exempts from this requirement an interrogation of the minor limited to questions reasonably necessary to obtain information that the officer reasonably believes are necessary to protect life or property from an imminent threat.[2] The section also exempts an interrogation by a probation officer "in the normal performance of the probation officer's duties under [Welfare and Institutions Code] [s]ection 625, 627.5, or 628."[3]

The Commission finds that the Test Claim was timely filed within 365 days of both the effective date of the test claim statute and the date of first incurring costs pursuant to that statute.[4]

The Commission also finds that section 625.6(a) imposes a reimbursable state-mandated program on counties and cities as described below.

First, while section 625.6(a) could arguably be viewed as requiring minors themselves to procure and consult with legal counsel before they allow themselves to be interrogated by local law enforcement, the other provisions of section 625.6,[5] the legislative history of that section,[6] and the section's statutory context[7] all indicate that section 625.6(a) imposes its requirement on law enforcement, not minors.[8] Thus, the Commission finds that the statute requires law enforcement

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[1] Welfare and Institutions Code section 625.6(a).

[2] Welfare and Institutions Code section 625.6(c).

[3] Welfare and Institutions Code section 625.6(d).

[4] Government Code section 17551; California Code of Regulations, title 2, section 1183.1(c).

[5] See Welfare and Institutions Code section 625.6(b) (penalizing law enforcement for violations of section 625.6(a)), (c) (excepting an interrogating officer from section 625.6(a) under specific circumstances), and (d) (excepting a probation officer from section 625.6(a) when in the normal performance of their duties under section 625, 627.5, or 628).

[6] See e.g. Exhibit E (4), Assembly Committee on Appropriations, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 1 (stating that the test claim statute "*requires law enforcement to provide* a person 17 years of age or younger access to legal counsel before the person waives their Miranda rights" (emphasis added)).

[7] See e.g. Welfare and Institutions Code section 627.5 (requiring a *probation officer* to advise a minor in temporary custody, as specified, to advise the minor of their *Miranda* rights and notify the judge of the juvenile court if the minor or the minor's parent or guardian requests counsel).

[8] See *In re Anthony L.* (2019) 43 Cal.App.5th 438, 450 (interpreting section 625.6(a) as imposing its requirement on law enforcement without discussion); *Y.C. v. Superior Court* (2021) 71 Cal.App.5th 410, 252, *as modified on denial of reh'g* (Dec. 6, 2021), review denied (Feb. 16, 2022) (same).

to ensure that youths, 17 years old or younger, consult with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights. In instances where the youth does not exercise their right to retain a private attorney, this includes providing legal counsel to provide the consultation in person, by telephone, or by video conference prior to a custodial interrogation, and before the waiver of any *Miranda* rights.

The Commission further finds that counties and cities are mandated to comply with the test claim statute. The requirement imposed by the test claim statute is triggered by law enforcement's decision to interrogate a minor. However, case law suggests that a local decision is not truly voluntary if it is, as a practical matter, constrained by duty.[9] Because a law enforcement officer's decision to interrogate a minor is constrained by the officer's sworn duty to investigate apparent criminal activity[10] and to protect the citizenry,[11] the Commission finds that law enforcement's decision to interrogate a minor is not a truly voluntary decision that would preclude reimbursement for downstream costs.

However, the requirements are not state-mandated with respect to school districts and community college districts since they are statutorily authorized, but not required, to hire peace officers and, unlike counties and cities, do not provide policing services as a core function or duty.[12] And there is no evidence in the record showing that the districts are compelled to provide policing services as a practical matter to carry out their core educational functions.[13]

The Commission finds that the test claim statute's requirements are new with respect to 16 and 17 year olds except for those who affirmatively request to consult with retained private counsel. Prior to the test claim statute, federal and state law required state and local law enforcement to provide a minor with legal counsel, and prohibited interrogation or further interrogation of that minor until counsel has been provided or the individual has validly waived their right thereto, when the minor affirmatively requested counsel.[14] And Welfare and Institutions Code section

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[9] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; *Department of Finance v. Commission on State Mandates (POBRA*) (2009) 170 Cal.App.4th 1355, 1367-1368.

[10] See *People v. Coston* (1990) 221 Cal.App.3d 898, 903; *McCain v. Sheridan* (1958) 160 Cal.App.2d 174, 177-178.

[11] *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 799; *Pasos v. Los Angeles County Civil Service Commission* (2020) 52 Cal.App.5th 690, 702, *as modified on denial of reh'g* (Aug. 18, 2020).

[12] Education Code sections 38000, 72330; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1368.

[13] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 744, 754; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1368.

[14] See *Malloy v. Hogan* (1964) 378 U.S. 1, 11 (Fifth Amendment right against self-incrimination applies against both state and federal authorities); see e.g. *Miranda v. Arizona* (1966) 384 U.S. 436, 494-498 (applying the Fifth Amendment right against self-incrimination to interrogations

625.6, as added by Statutes 2017, chapter 681, further required law enforcement to ensure that minors 15 years or younger consult with legal counsel before custodial interrogation and the waiver of any *Miranda* rights, with certain exceptions. However, there was no requirement to provide counsel to 16- or 17-year-old minors at the interrogation stage. Instead, Welfare and Institutions Code section 634 provides that the appointment of counsel to minors who appear without counsel occurs later at the detention hearing. The detention hearing is required to be provided "before the expiration of the next judicial day after a petition to declare the minor a ward or dependent child has been filed."[15] Thus, under prior law, if a 16- or 17-year-old minor requested counsel but did not have counsel at the interrogation stage, local law enforcement had no choice but to refrain from interrogating the minor. The only 16- or 17-year-old minors who would have the opportunity to consult with counsel prior to the detention hearing were those who chose to retain counsel. Accordingly, the requirement of the test claim statute is *not* new when 16- or 17-year-old minors who affirmatively request to consult with retained private counsel. Thus, the test claim statute's requirement that law enforcement ensure that minors consult with legal counsel prior to a custodial interrogation or the waiver of any *Miranda* rights is new with respect to minors 16 or 17 years of age except for those who affirmatively request to consult with retained private counsel.

The Commission finds the test claim statute imposes a new program or higher level of service in an existing program because it both imposes unique requirements on local agencies that do not generally apply to all residents and entities in the state and carries out the governmental function of providing a service to the public, either of which is sufficient for a requirement to constitute a "program" within the meaning of article XIII B, section 6.[16] The test claim statute imposes unique requirements on local agencies because it only applies in the context of custodial interrogations,[17] which are uniquely governmental actions defined as "questioning initiated by *law enforcement officers* after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[18] The test claim statute carries out the governmental function of providing a service to the public by seeking to minimize false confessions extracted from minors in custodial interrogations[19] and protect minors from "psychologically coercive interrogations and other psychologically coercive dealings with the police."[20]

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conducted by local police officers). If an individual has a private attorney, they may of course consult with that attorney instead of relying on government-appointed counsel. (*Miranda v. Arizona* (1966) 384 U.S. 436, 471-473; Welfare and Institutions Code sections 625 and 627.5.)

[15] Welfare and Institutions Code section 632.

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

[17] Welfare and Institutions Code section 625.6(a).

[18] *Miranda v. Arizona* (1966) 38 U.S. 436, 444, emphasis added.

[19] See Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 4.

[20] Statutes 2020, chapter 335, section 1.

Finally, the Commission finds there is substantial evidence that the claimant has incurred increased costs mandated by the state to comply with the test claim statute.[21] Moreover, although Statutes 2020, chapter 92 and Penal Code section 987.6 provide potential sources of offsetting revenue to counties for public defender and appointed counsel costs, that revenue is not "specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" such that Government Code section 17556(e) would preclude reimbursement. And none of the other exceptions to reimbursement in Government Code section 17556 apply. Consequently, the Commission finds that the test claim statute imposes increased costs mandated by the state.

Accordingly, the Commission approves this Test Claim and finds that Welfare and Institutions Code section 625.6(a), as amended by Statutes 2020, chapter 335, imposes a reimbursable state-mandated program on counties and cities, beginning January 1, 2021, to perform the following activity:

- Ensure that youths, ages 16 and 17, *except for those who affirmatively request to consult with retained private counsel*, consult with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights. In instances where the youth does not exercise their right to retain a private attorney, this includes providing legal counsel to consult with the youth in person, by telephone, or by video conference prior to a custodial interrogation, and before the waiver of any *Miranda* rights.

The following state funds will be identified in the Parameters and Guidelines as potential offsetting revenues:

- Funding appropriated from the General Fund by Statutes 2020, chapter 92 (AB 1869) to backfill a county for the revenue lost due to the repeal of former Penal Code section 987.4 and former Government Code section 27712, which provided funding for the costs of defense counsel and legal assistance in criminal proceedings, to the extent that the funds are used to offset a county's costs to comply with the mandate.
- Funding made available to counties pursuant to Penal Code section 987.6 for providing legal assistance for persons charged with violations of state criminal law or involuntarily detained under the Lanterman-Petris-Short Act and used to offset a county's costs to comply with the mandate.

Reimbursement is not required in the following situations:

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[21] Exhibit A, Test Claim, filed December 22, 2021, pages 11, 18-20 (Declaration of Cris Mercurio, Head Deputy of the Juvenile Division of the County of Los Angeles Public Defender's Office, para. 15 and Attachment A), and 21 (Declaration of Sung Lee, Departmental Finance Manager II with the County of Los Angeles Public Defender's Office, paras. 3 and 5); See Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 4; Exhibit E (12), U.S. Department of Justice, Office of Justice Programs, Juvenile Justice Statistics National Report Series Bulletin (May 2021), page 3, https://ojjdp.ojp.gov/publications/juvenile-arrests-2019.pdf (accessed on July 7, 2022).

- When the 16 or 17 year old affirmatively requests to consult with retained private counsel prior to interrogation and before waiver of any *Miranda* rights, which is required by existing state and federal law.[22]
- For school districts or community college districts, who are authorized but not required by state law to employ peace officers.[23]
- When the officer who questioned the youth reasonably believed the information the officer sought was necessary to protect life or property from an imminent threat and the officer's questions were limited to those questions that were reasonably necessary to obtain that information.[24]
- In the normal performance of a probation officer's duties under Welfare and Institutions Code section 625, 627.5, or 628.[25]

COMMISSION FINDINGS

I. Chronology

01/01/2021	Welfare and Institutions Code section 625.6 was amended by Statutes 2020, chapter 335.
12/22/2021	The claimant filed the Test Claim.[26]
03/07/2022	The Department of Finance (Finance) filed comments on the Test Claim.[27]
04/06/2022	The claimant filed rebuttal comments.[28]
09/13/2022	Commission staff issued the Draft Proposed Decision.[29]
12/02/2022	The Commission continued the hearing on the Test Claim.[30]
01/12/2023	Commission staff issued the Revised Proposed Decision.

[22] Welfare and Institutions Code sections 625, 627.5; *Miranda v. Arizona* (1966) 384 U.S. 436, 470-473.

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

[24] Welfare and Institutions Code section 625.6(c)(2).

[25] Welfare and Institutions Code section 625.6(d).

[26] Exhibit A, Test Claim, filed December 22, 2021, page 1.

[27] Exhibit B, Finance's Comments on the Test Claim, filed March 7, 2022, page 1.

[28] Exhibit C, Claimant's Rebuttal Comments, filed April 6, 2022, page 1.

[29] Exhibit D, Draft Proposed Decision, issued September 13, 2022.

[30] Exhibit E (13), Commission on State Mandates, Excerpt from the Transcript of the December 2, 2022 Commission Meeting.

II. Background

A. The Fifth Amendment to the United States Constitution and Custodial Interrogations under Federal and State Law.

The Fifth Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment,[31] provides that "No person shall … be compelled in any criminal case to be a witness against himself …"

In *Miranda v. Arizona*, the United States Supreme Court held that this privilege against self-incrimination applies to custodial interrogations.[32] A custodial interrogation occurs when "a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[33] Such interrogations, the court concluded, "contain[] inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely."[34] "In order to combat these pressures" and "to assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process," the court held that individuals facing custodial interrogation must be afforded several rights.[35] These rights are set forth in an advisement often referred to as a *Miranda* warning.[36]

The individual in custody and prior to interrogation must be advised of their Fifth Amendment right to remain silent,[37] provided with an explanation that anything they say can and will be used

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[31] *Malloy v. Hogan* (1964) 378 U.S. 1, 6.

[32] *Miranda v. Arizona* (1966) 384 U.S. 436, 461.

[33] *People v. Ochoa* (1998) 19 Cal.4th 353, 401; see also *J.D.B. v. North Carolina* (2011) 564 U.S. 261, 270 (Both "custody" and "interrogation" are terms of art. A suspect is "in custody" if a reasonable person in the same circumstances would not have felt at liberty to terminate the interrogation and leave.); *Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601 (A suspect is under interrogation if they are subject to "express questioning or words or actions that, given the officer's knowledge of any special susceptibilities of the suspect, the officer knows or reasonably should know are likely to "have ... the force of a question on the accused," (Citation), and therefore be reasonably likely to elicit an incriminating response.").

[34] *Miranda v. Arizona* (1966) 384 U.S. 436, 467.

[35] *Miranda v. Arizona* (1966) 384 U.S. 436, 467 & 469.

[36] See e.g. *Missouri v. Seibert* (2004) 542 U.S. 600, 604. "The right to counsel for purposes of custodial interrogation implicates the Fifth Amendment privilege against self-incrimination, and must be distinguished from the Sixth Amendment right to counsel, which attaches upon the initiation of formal criminal proceedings." (*People v. Nelson* (2012) 53 Cal.4th 367, 371 (citing to U.S. Const., 5th & 6th Amends.; *People v. Gonzalez* (2005) 34 Cal.4th 1111, 1123 [discussing *McNeil v. Wisconsin* (1991) 501 U.S. 171, 177-178].)

[37] *Miranda v. Arizona* (1966) 384 U.S. 436, 467-468.

against them,[38] clearly informed of their right to counsel,[39] and advised that a lawyer will be appointed to represent them if they cannot afford one.[40] If an individual wishes to forgo these rights, they may validly waive them by doing so "voluntarily, knowingly and intelligently."[41]

Law enforcement must respect these rights by ceasing interrogation once the individual "indicates in any manner, at any time prior to or during questioning, that [they] wish[] to remain silent" or "states that [they] want[] an attorney."[42]

As the Court elaborated, an individual invoking their right to counsel "does not mean, as some have suggested, that each police station must have a 'station house lawyer' present at all times to advise prisoners … If authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may refrain from doing so without violating the person's Fifth Amendment privilege so long as they do not question [them] during that time."[43]

If law enforcement fails to respect these rights, "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived [their] privilege against self-incrimination and [their] right to retained or appointed counsel."[44]

These protections have long been enshrined in state law.[45] In 1968, a year after *Miranda* was handed down, the Legislature codified these rights specifically for minors who are taken into temporary custody at Welfare and Institutions Code section 625:

> In any case where a minor is taken into temporary custody on the ground that there is reasonable cause for believing that such minor is a person described in Section 601 or 602, or that he has violated an order of the juvenile court or escaped from any commitment ordered by the juvenile court, the officer shall advise such minor that anything he says can be used against him and shall advise him of his constitutional rights, including his right to remain silent, his right to

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[38] *Miranda v. Arizona* (1966) 384 U.S. 436, 469.

[39] *Miranda v. Arizona* (1966) 384 U.S. 436, 471.

[40] *Miranda v. Arizona* (1966) 384 U.S. 436, 473.

[41] *Miranda v. Arizona* (1966) 384 U.S. 436, 444.

[42] *Miranda v. Arizona* (1966) 384 U.S. 436, 473-474.

[43] *Miranda v. Arizona* (1966) 384 U.S. 436, 474.

[44] *Miranda v. Arizona* (1966) 384 U.S. 436, 475.

[45] California Constitution article I, section 15. See *People v. May* (1988) 44 Cal.3d 309, 316 ("The question is not whether the [defendant] had a constitutional right [under *Miranda*] to refuse to disclose any information during the police interrogation [ ]. He clearly had such rights under both the state and federal Constitutions."); see also Evidence Code section 940 ("To the extent that such privilege exists under the Constitution of the United States or the State of California, a person has a privilege to refuse to disclose any matter that may tend to incriminate him.").

> have counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel.[46]

That same year, the Legislature enacted Welfare and Institutions Code section 627.5, which provides the same right to counsel when a minor is taken into temporary custody before a probation officer:

> In any case where a minor is taken before a probation officer pursuant to the provisions of Section 626 [temporary custody] and it is alleged that such minor is a person described in Section 601 or 602, the probation officer shall immediately advise the minor and his parent or guardian that anything the minor says can be used against him and shall advise them of the minor's constitutional rights, including his right to remain silent, his right to have counsel present during any interrogation, and his right to have counsel appointed if he is unable to afford counsel. If the minor or his parent or guardian requests counsel, the probation officer shall notify the judge of the juvenile court of such request and counsel for the minor shall be appointed pursuant to Section 634.[47]

Welfare and Institutions section 634 provides that "[i]n a case in which the minor is alleged to be a person described in Section 601 or 602, the court shall appoint counsel for the minor if he or she appears at the hearing without counsel, whether he or she is unable to afford counsel or not, unless there is an intelligent waiver of the right of counsel by the minor." The hearing at which counsel is appointed is a detention hearing which must take place "before the expiration of the next judicial day after a petition to declare the minor a ward or dependent child has been filed."[48] A juvenile delinquency detention hearing is also commonly called an arraignment.[49]

California has long provided the statutory right to adults, after arrest, to make a phone call to an attorney.[50] In 1971, the Legislature amended Welfare and Institutions Code section 627 to provide that immediately after a minor has been taken "to a place of confinement" and "no later than three hours after [the minor] has been taken into custody," the minor shall be advised that

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[46] Welfare and Institutions Code section 625. This language was amended into the section by Statutes 1967, chapter 1355, and has remained in that section unchanged ever since. (See Stats.1971, ch. 1730 § 1, Stats. 1971, ch. 1748, § 69; Stats.1976, ch. 1068, § 24.)

[47] Welfare and Institutions Code section 627.5, added by Statutes 1967, chapter 1355. The section has not been amended since.

[48] Welfare and Institutions Code section 632.

[49] Exhibit E (14), Juvenile FAQs, Law Offices of Los Angeles County Public Defender website, https://pubdef.lacounty.gov/juvenile/juv-faqs/ (accessed on December 22, 2022).

[50] Penal Code section 851.5, added by Statutes 1959, chapter 1862. As amended in 1975, Penal Code section 851.5(b) requires any police or detention facility to post a conspicuous sign which provides the phone number for the public defender or other indigent defense counsel. Although the corollary statute for minors, Welfare and Institutions Code section 627 was amended five years later in 1980, the requirement for the posting of a sign was not included and Penal Code section 851.5 is not applicable to minors.

they have the right to make at least two phone calls at their own expense: one to their parent or guardian, a responsible relative or their employer, and the other to an attorney.[51] As further amended in 1980, Welfare and Institutions Code section 627 now states the following:

> Immediately after being taken to a place of confinement pursuant to this article and, except where physically impossible, no later than one hour after he has been taken into custody, the minor shall be advised and has the right to make at least two telephone calls from the place where he is being held, one call completed to his parent or guardian, a responsible relative, or his employer, and another call completed to an attorney. The calls shall be at public expense, if the calls are completed to telephone numbers within the local calling area, and in the presence of a public officer or employee. Any public officer or employee who willfully deprives a minor taken into custody of his right to make such telephone calls is guilty of a misdemeanor.[52]

Although minors, like adults, may legally effectuate a valid waiver of their *Miranda* rights,[53] jurists have increasingly questioned whether minors — particularly young children — are truly capable of voluntarily, knowingly, and intelligently waiving their rights and understanding the consequences of not invoking them.[54] "A growing body of research indicates that adolescents are less capable of understanding their constitutional rights than their adult counterparts, and are also more prone to falsely confessing to a crime they did not commit."[55]

Such concerns have led courts to recognize the propriety — and often need — of taking a juvenile suspect's minor status into account when determining whether the child is in "custody"[56] or has made a legally valid waiver of their *Miranda* rights.[57] For example, the court in *In re IF*, explained how these custody determinations are made in juvenile cases:

> Custody determinations are resolved by an objective standard: Would a reasonable person interpret the restraints used by the police as tantamount to a formal arrest? [Citations.] The totality of the circumstances surrounding an incident must be considered as a whole." (*People v. Pilster* (2006) 138

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[51] Welfare and Institutions Code section 627, as amended by Statutes 1971, chapter 1030.

[52] Welfare and Institutions Code section 627. as amended by Statutes 1980, chapter 1092.

[53] *Fare v. Michael C.* (1979) 442 U.S. 707, 724-725.

[54] See e.g. *In re Joseph H.* (2015) 200 Cal.Rptr.3d 1, 1-5 (statement by Liu, J., dissenting from denial of review).

[55] Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 4; see also *In re Elias V.* (2015) 237 Cal.App.4th 568, 577-578, 588-589, as modified (June 24, 2015) ("The developing consensus about the dangers of interrogation has resulted from the growing number of studies showing that the risk interrogation will produce a false confession is significantly greater for juveniles than for adults; indeed, juveniles usually account for one-third of proven false confession cases.").

[56] *J.D.B. v. North Carolina* (2011) 564 U.S. 261, 277.

[57] *Fare v. Michael C.* (1979) 442 U.S. 707, 725.

> Cal.App.4th 1395, 1403, 42 Cal.Rptr.3d 301, fn. omitted.) Courts have identified a variety of circumstances to be considered as part of the custody determination. . . .
>
> In juvenile cases, the same factors still apply, but with an added consideration. In *J.D.B. v. North Carolina* (2011) 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (*J.D.B.*), the U.S. Supreme Court concluded that a child's age may be considered in the *Miranda* analysis, "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer." (*Id.* at p. 277, 131 S.Ct. 2394.) The court recognized that, "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." (*Id.* at p. 272, 131 S.Ct. 2394; see also *Haley v. Ohio* (1948) 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 [in the context of police interrogation, events "[t]hat would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens"].) Although age may not be a significant factor in every case, the court observed, common sense dictates that "children cannot be viewed simply as miniature adults." (*J.D.B., supra,* at pp. 262 & 274, 131 S.Ct. 2394.) Accordingly, the court concluded that "a child's age properly informs the *Miranda* custody analysis." (*Id.* at p. 265, 131 S.Ct. 2394.)[58]

However, neither the United States Supreme Court nor the California Supreme Court has yet interpreted the Fifth Amendment as requiring additional protections for minors facing custodial interrogations.[59]

In order to address this perceived shortcoming,[60] the California Legislature has, in recent years, passed two bills requiring minors to consult with legal counsel before undergoing custodial interrogations: Statutes 2017, chapter 681 and the test claim statute, Statutes 2020, chapter 335.

B. Statutes 2017, Chapter 681

Statutes 2017, chapter 681 added Welfare and Institutions Code section 625.6. As enacted, that section generally required "a youth 15 years of age or younger [to] consult with legal counsel in

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[58] *In re IF* (2018) 20 Cal.App.5th 735, 760. See also *Fare v. Michael C.* (1979) 442 U.S. 707, 724-725 ("[T]he determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel. [Citation.] [¶] This totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved.").

[59] See *In re Joseph H.* (2015) 200 Cal.Rptr.3d 1, 1-5 (statement by Liu, J., dissenting from denial of review).

[60] See Exhibit E (1), Senate Committee on Public Safety, Analysis of SB 395 (2017-2018 Regular Session), as introduced, pages 2-3; Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, pages 4-7.

person, by telephone, or by video conference" prior to a custodial interrogation and before waiving their *Miranda* rights. That section also prohibited the youth from waiving this consultation.[61]

To discourage violations, the section required courts to "consider the effect of a failure to comply with"[62] the requirement when deciding whether a child properly waived their *Miranda* rights and determining whether the statements were voluntary.[63]

The section exempted an officer from its requirement if the officer both (1) reasonably believed the information sought was necessary to protect life or property from an imminent threat and (2) limited their questions to those reasonably necessary to obtain that information.[64] The section also exempted probation officers from this requirement when taking a minor into temporary custody, advising the minor of their constitutional rights, or investigating the circumstances for which the minor was taken into custody, as specified.[65]

All of these provisions were to sunset on January 1, 2025.[66]

The Legislature's stated motivation for enacting these provisions was the increased vulnerability of children and adolescents "to psychologically coercive interrogations and in other dealings with the police [as compared with] resilient adults experienced with the criminal justice system."[67] Because of these vulnerabilities, it was the Legislature's view that youths under 18

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[61] Former Welfare and Institutions Code section 625.6(a), as added by Statutes 2017, chapter 681, section 2.

[62] Former Welfare and Institutions Code section 625.6(b), as added by Statutes 2017, chapter 681, section 2. This is not the same as requiring the statements to be excluded. The Truth-in-Evidence provision of the California Constitution prohibits exclusion of evidence in a criminal proceeding except pursuant to the United States Constitution or a state statute enacted by a two-thirds vote of the membership in each house of the Legislature. Because Statutes 2017, chapter 681 did not receive a two-thirds vote in at least one house, that statute could not require the exclusion of statements obtained in violation of its provisions. (*In re Anthony L.* (2019) 43 Cal.App.5th 438, 449-450.)

[63] *In re Anthony L.* (2019) 43 Cal.App.5th 438, 450.

[64] Former Welfare and Institutions Code section 625.6(c), as added by Statutes 2017, chapter 681, section 2.

[65] Former Welfare and Institutions Code section 625.6(d), as added by Statutes 2017, chapter 681, section 2; see also Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 395 (2017-2018 Regular Session), as amended September 7, 2017, page 1.

[66] Former Welfare and Institutions Code section 625.6(f), as added by Statutes 2017, chapter 681, section 2.

[67] Statutes 2017, chapter 681, section 1.

years of age facing custodial interrogations "should consult with legal counsel to assist in their understanding of their rights and the consequences of waiving those rights."[68]

C. The Test Claim Statute – Statutes 2020, Chapter 335

Statutes 2020, chapter 335 amended Welfare and Institutions Code section 625.6 to expand the provisions enacted by Statutes 2017, chapter 681 in several ways. First, it permanently expanded these requirements to also apply to 16 and 17 year olds. As amended by the test claim statute, Welfare and Institutions Code section 625.6(a) now also requires youths of 16 or 17 years of age to "consult with legal counsel in person, by telephone, or by video conference" "[p]rior to a custodial interrogation, and before the waiver of any Miranda rights."[69] As under the original version of section 625.6, the legal consultation may not be waived.

Second, the test claim statute removed the January 1, 2025, sunset date, thereby also permanently requiring youths of 15 years of age or younger to consult with legal counsel prior to a custodial interrogation or waiving their *Miranda* rights.[70]

And third, the test claim statute additionally requires a court to consider any willful violation of either of these requirements in determining the credibility of a law enforcement officer under Evidence Code section 780.[71]

With these amendments, Welfare and Institutions Code section 625.6 now states the following:

> (a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.
>
> (b) The court shall, in adjudicating the admissibility of statements of a youth 17 years of age or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a) and, additionally, shall consider any willful violation of subdivision (a) in determining the credibility of a law enforcement officer under Section 780 of the Evidence Code.
>
> (c) This section does not apply to the admissibility of statements of a youth 17 years of age or younger if both of the following criteria are met:
>
> (1) The officer who questioned the youth reasonably believed the information the officer sought was necessary to protect life or property from an imminent threat.
>
> (2) The officer's questions were limited to those questions that were reasonably necessary to obtain that information.

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[68] Statutes 2017, chapter 681, section 1.

[69] Welfare and Institutions Code section 625.6(a).

[70] Statutes 2020, chapter 335, section 2.

[71] Welfare and Institutions Code section 625.6(b).

(d) This section does not require a probation officer to comply with subdivision (a) in the normal performance of the probation officer's duties under Section 625, 627.5, or 628.[72]

The legislative findings accompanying these provisions echoed those contained in Statutes 2017, chapter 681.[73] They describe the vulnerability of minors to "psychologically coercive interrogations and other psychologically coercive dealings with the police,"[74] which committee analyses of the bill note also make minors more prone to falsely confessing to crimes they do not commit.[75] The legislative findings also declare the Legislature's view that "[i]n situations of custodial interrogation and prior to making a waiver of rights under Miranda v. Arizona (1966) 384 U.S. 436, a youth under 18 years of age should consult with legal counsel to assist in their understanding of their rights and the consequences of waiving those rights."[76]

Although the test claim statute does not explicitly state who must pay for the legal consultations that it requires, committee analyses of both the test claim statute and its predecessor display a legislative expectation that counties and cities would be responsible for these expenses.[77] In addition, the Senate Floor Analysis of the test claim statute explains the fiscal effect of the bill based on county public defender costs as follows:

> According to the Assembly Appropriations Committee, cost pressures (Local Funds/General Fund (GF) - Proposition 30) in the low millions of dollars annually for 482 cities and 58 counties to provide legal counsel to minors ages 16 and 17 prior to custodial interrogations. The Department of Justice reported approximately 43,000 juvenile arrests in 2019. The average hourly rate for attorneys in California is approximately $250. If 10%, or 4,300 of those arrested as juveniles are 16 or 17 years of age, annual costs across the state for legal

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[72] Welfare and Institutions Code sections 625, 627.5, and 628 describe the "normal course of duties" of a probation officer with respect to minors in temporary custody. (See Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 2). Section 625 describes the situations in which a peace officer may take a minor into temporary custody without a warrant. If the minor is then taken before the probation officer of the relevant county, section 627.5 requires that probation officer to advise the minor and their guardian of the minor's *Miranda* rights and, if those rights are invoked, requires appointment of that counsel, while section 628 further requires that probation officer to immediately investigate the circumstances for which the minor was taken into custody, as specified.

[73] See Statutes 2017, chapter 681, section 1; Statutes 2020, chapter 335, section 1.

[74] Statutes 2020, chapter 335, section 1.

[75] Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 4.

[76] Statutes 2020, chapter 335, section 1.

[77] See e.g. Exhibit E (2), Senate Committee on Appropriations, Analysis of SB 395 (2017-2018 Regular Session), as introduced, page 1; Exhibit E (4), Assembly Committee on Appropriations, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 1.

services will be approximately $2.2 million dollars. Public defender costs vary across the state but, in most cases, suspects are not required to pay any fee for public defender services. These costs may be reimbursable by the state pursuant to requirements of Proposition 30. Costs to the GF will depend on whether the Commission on State Mandates determines these costs to be reimbursable.[78]

III. Positions of the Parties

A. County of Los Angeles

The claimant, County of Los Angeles, alleges that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution. According to the claimant, the test claim statute's requirement that 16 and 17 year olds consult with legal counsel prior to a custodial interrogation, and before the waiver of any *Miranda* rights,[79] constitutes a reimbursable state-mandated program because the required activities are only provided by local governmental agencies and also because providing these activities constitutes a higher level of service.[80]

The claimant states that it complied with Welfare and Institutions Code section 625.6 as follows:

> To comply with WIC § 625.6, law enforcement agencies in the County contact the Public Defender to arrange Miranda consultations (consultations) for juveniles prior to custodial interrogations. These contacts by law enforcement agencies are referred to by the Public Defender as Miranda Calls. [Fn. Omitted.] The Public Defender created the Juvenile Miranda Duty program to perform these consultations. [Fn. Omitted.] The Public Defender is the primary agency that provides indigent defense services to those accused of crimes and is the only agency providing consultations in the County.
>
> The Juvenile Miranda Duty program is staffed by Public Defender attorneys who are available 24 hours a day, every day of the year. [Fn. Omitted.] The attorneys are assigned shifts that are referred to by the Public Defender as Miranda Duty. Consultations are conducted over the telephone or in person. An attorney will interview the youth and discuss with the youth his or her Miranda rights. The duration of the consultation may vary depending on various factors, including the youth's level of education, experience, maturity, and sophistication.

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[78] Exhibit E (5), Senate Rules Committee, Office of Senate Floor Analyses, Analysis of SB 203, (2019-2020 Regular Session), as amended July 27, 2020, pages 6-7.

[79] See Exhibit C, Claimant's Rebuttal Comments, filed April 6, 2022, page 2 ("The County agrees that the mandated program stated in Senate Bill (SB) 203 should be narrowly focused to capture the costs incurred in providing services to juveniles with a maximum age 15 years to 17 years of age. The County is aware that the deadline for filing a test claim on SB 395 has passed; however, the program was extended by the Legislature in SB 203 to include older juveniles. The County urges the Commission to grant the test claim as it relates to those older juveniles with a maximum age 15 years to 17 years of age.").

[80] Exhibit A, Test Claim, filed December 22, 2021, page 13.

> Pursuant to SB 203, a law enforcement agency contacts the Public Defender's Juvenile Headquarters or County Operator to arrange for a legal consultation prior to a custodial interrogation. [Fn. Omitted.] The supervising attorney then arranges the consultation or designates another attorney to handle the Miranda Call. The supervising attorneys are assigned Miranda Duty on a weekly rotating basis.
>
> Prior to the passage of these laws, the Public Defender was not obligated to provide any representation before appointment at the arraignment stage of a criminal proceeding. Now, the Public Defender is required to provide consultations for juvenile arrestees prior to their appointment at the arraignment stage.[81]

The claimant alleges that it incurred increased costs of $5,821.45 in the 2020-2021 fiscal year to comply with the test claim statute.[82] Specifically, the claimant alleges that it incurred these costs in providing consultations to minors as part of its Juvenile Miranda Duty program, described above.[83]

The claimant further estimates that it will incur $13,000 in increased costs for complying with Welfare and Institutions Code section 625.6 in the 2021-2022 fiscal year[84] and that annual costs across the state for legal services will be approximately $6,427,500.[85]

The claimant also states that it has not received any funding to offset its costs incurred pursuant to the test claim statute.[86] This includes any funding received pursuant to Statutes 2020, chapter 92 (AB 1869). According to the claimant, all of the public defender fees that were eliminated by that bill related to the registration and cost of court-appointed lawyers, and therefore could not have been used to offset costs incurred pursuant to the test claim statute, which the claimant

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[81] Exhibit A, Test Claim, filed December 22, 2021, page 10.

[82] Exhibit A, Test Claim, filed December 22, 2021, pages 11, 18-20 (Declaration of Cris Mercurio, Head Deputy of the Juvenile Division of the County of Los Angeles Public Defender's Office, para. 15 and Attachment A), and 21 (Declaration of Sung Lee, Departmental Finance Manager II in the County of Los Angeles Public Defender's Office, paras. 3 and 5).

[83] Exhibit A, Test Claim, filed December 22, 2021, pages 10-11, 18-19 (Declaration of Cris Mercurio, Head Deputy of the Juvenile Division of the County of Los Angeles Public Defender's Office, para. 15), and 21 (Declaration of Sung Lee, Departmental Finance Manager II in the County of Los Angeles Public Defender's Office, para. 3).

[84] Exhibit A, Test Claim, filed December 22, 2021, pages 11 and 21 (Declaration of Sung Lee, Departmental Finance Manager II in the County of Los Angeles Public Defender's Office, paras. 5 and 6).

[85] Exhibit A, Test Claim, filed December 22, 2021, pages 11 and 22 (Declaration of Sung Lee, Departmental Finance Manager II in the County of Los Angeles Public Defender's Office, para. 7).

[86] Exhibit A, Test Claim, filed December 22, 2021, pages 12, 15, and 21 (Declaration of Sung Lee, Departmental Finance Manager II in the County of Los Angeles Public Defender's Office, para. 6).

maintains requires legal consultations prior to the appointment of counsel.[87] Thus, any funding received to backfill revenues lost from the repeal of those fees would similarly not be provided to offset those costs.[88]

The claimant did not file comments on the Draft Proposed Decision. However, at the hearing on December 2, 2022, Craig Osaki, with the Los Angeles County's Public Defender's Office, testified under oath that the public defender's office is appointed to a minor's case at the arraignment hearing which begins their obligation to defend. He explained that the interrogation of a minor happens before the appointment of counsel at the arraignment hearing. He stated that under the test claim statute, which requires consultation prior to the interrogation, the public defender's office is obligated to provide the consultation whether or not the minor affirmatively requests counsel.[89] He further clarified that after an advisement under *Miranda*, if the minor invokes their right to counsel, the interrogation ceases and an attorney will be provided at the arraignment hearing if charges are brought forth. A peace officer seeking to interrogate a minor cannot appoint counsel. Generally, under prior law, the officer would cease the interrogation until after the arraignment if the right to counsel were invoked.[90]

B. Department of Finance

Finance points out that the claimant's alleged costs may include costs not required by the test claim statute.[91] Finance observes that although preexisting law already required local agencies to provide legal consultations to youths ages 15 years of age or younger, the claimant does not exclude those minors in calculating its statewide cost estimate.[92] Accordingly, "Finance recommends the Commission examine the estimated costs cited by the Claimant to ensure they only include the increased cost of providing legal counsel to youths ages 16 and 17 years old."[93]

Finance also suggests that state funding provided to the claimant pursuant to Statutes 2020, chapter 92 (AB 1869) may serve as an offset to any state-mandated costs incurred by the claimant pursuant to the test claim statute.[94] Finance notes that Statutes 2020, chapter 92 repealed various criminal administrative fines and fees, including the public defender fee, and annually appropriated $65 million from the State's General Fund through the 2025-26 fiscal year

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[87] Exhibit C, Claimant's Rebuttal Comments, filed April 6, 2022, page 2.

[88] Exhibit C, Claimant's Rebuttal Comments, filed April 6, 2022, page 2.

[89] Exhibit E (13), Commission on State Mandates, Excerpt from the Transcript of the December 2, 2022 Commission Meeting, pages 15-16.

[90] Exhibit E (13), Commission on State Mandates, Excerpt from the Transcript of the December 2, 2022 Commission Meeting, pages 17-19.

[91] Exhibit B, Finance's Comments on the Test Claim, filed March 7, 2022, page 1.

[92] Exhibit B, Finance's Comments on the Test Claim, filed March 7, 2022, pages 1-2.

[93] Exhibit B, Finance's Comments on the Test Claim, filed March 7, 2022, page 1.

[94] Exhibit B, Finance's Comments on the Test Claim, filed March 7, 2022, page 2.

to backfill counties for the lost fee revenue.[95] Accordingly, Finance also recommends the Commission consider this funding while reviewing this Test Claim.[96]

Finance did not file comments on the Draft Proposed Decision.

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,

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[95] Exhibit B, Finance's Comments on the Test Claim, filed March 7, 2022, page 2.

[96] Exhibit B, Finance's Comments on the Test Claim, filed March 7, 2022, page 2.

[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 Cal.3d 830, 835.

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 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 with a Potential Period of Reimbursement Beginning January 1, 2021.

Government Code section 17551(c) states that test claims "shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Section 1183.1(c) of the Commission's regulations defines 12 months as 365 days.[106]

Here, the test claim statute went into effect on January 1, 2021,[107] and the claimant asserts that it first incurred costs related to implementing that statute on that date.[108] The Test Claim was filed on December 22, 2021.[109] Thus, the Test Claim was timely filed within 365 days of both the effective date of the test claim statute and the date that the claimant first incurred costs pursuant to that statute.[110]

Government Code section 17557(e) requires a test claim to be "submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

Because the Test Claim was filed on December 22, 2021, the potential period of reimbursement under Government Code section 17557 begins on July 1, 2020. However, since the test claim

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[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.

[103] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

[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 2020, chapter 335; see California Constitution article IV, section 8.

[108] Exhibit A, Test Claim, filed December 22, 2021, page 21 (Declaration of Sung Lee, Departmental Finance Manager II with the County of Los Angeles Public Defender's Office, paragraph 4).

[109] Exhibit A, Test Claim, filed December 22, 2021, page 1.

[110] Government Code section 17551; California Code of Regulations, title 2, section 1183.1(c).

statute has a later effective date, the potential period of reimbursement for this Test Claim begins on the statute's effective date, January 1, 2021.

B. Welfare and Institutions Code Section 625.6(a), as Amended by Statutes 2020, Chapter 335, Imposes a Reimbursable State-Mandated Program on Cities and Counties to Ensure that 16 or 17 Year Olds Consult with Legal Counsel Prior to Custodial Interrogation and Before Waiving Any *Miranda* Rights, Except For Those Who Affirmatively Request To Consult With Retained Private Counsel.

As described below, the Commission finds that Welfare and Institutions section 625.6(a), as amended by the test claim statute (Stats. 2020, ch. 335), imposes a reimbursable state-mandated program on cities and counties within the meaning of article XIII B, section 6 of the California Constitution as specified herein.

1. The Test Claim Statute Imposes a State-Mandated Program, Only on Cities and Counties to Ensure that Youths 17 Years of Age or Younger Consult with Legal Counsel Prior to Custodial Interrogation and Before Waiving Any *Miranda* Rights.

As amended by the test claim statute, Welfare and Institutions Code section 625.6(a) states the following:

> (a) Prior to a custodial interrogation, and before the waiver of any Miranda rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.

By the plain language of the statute, subdivision (a) does not apply in the following situations:

- When the officer who questioned the youth reasonably believed the information the officer sought was necessary to protect life or property from an imminent threat and that officer's questions were limited to those questions that were reasonably necessary to obtain that information.[111]
- In the normal performance of a probation officer's duties under Welfare and Institutions Code section 625, 627.5, or 628.[112]

[111] Welfare and Institutions Code section 625.6(c)(2).

[112] Welfare and Institutions Code section 625.6(d).

The claimant asserts that section 625.6(a) imposes new requirements on itself and other local governments to provide 16 and 17 year olds with legal consultations prior to custodial interrogations or the waiver of any *Miranda* rights.[113] Finance does not contest this assertion.[114]

As explained below, the Commission agrees that the test claim statute imposes state-mandated requirements on cities and counties. While the statutory language could arguably be viewed as requiring minors *themselves* to procure and consult with legal counsel before they allow themselves to be interrogated by local law enforcement, the much stronger reading of the language is that it places that onus on *local law enforcement*.

a. The test claim statute imposes a requirement on local government to ensure that youths, 17 years or younger, consult with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights.

The rules of statutory construction require the Commission to construe statutory language in the context of its legislative purpose.[115] In order to determine that purpose, the Commission, like the courts, "must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence … The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible [Citations.] Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent."[116]

Here, Welfare and Institutions Code section 625.6(a), as amended by the test claim statute, provides that "a youth 17 years of age or younger shall consult with legal counsel" prior to

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[113] Exhibit A, Test Claim, filed December 22, 2021, Pages 10-11; see Exhibit C, Claimant's Rebuttal Comments, filed April 6, 2022, page 2, where the claimant states that "The County agrees that the mandated program stated in Senate Bill (SB) 203 should be narrowly focused to capture the costs incurred in providing services to juveniles with a maximum age 15 years to 17 years of age. The County is aware that the deadline for filing a test claim on SB 395 has passed; however, the program was extended by the Legislature in SB 203 to include older juveniles. The County urges the Commission to grant the test claim as it relates to those older juveniles with a maximum age 15 years to 17 years of age." Since SB 203, the test claim statute, only expanded the alleged program to include 16 and 17 year olds, the Commission understands the claimant's request that "the Commission [] grant the test claim as it relates to those older juveniles" as a request for costs associated with juveniles who are 16 or 17 years of age. Regardless, as explained in the Discussion, *post*, costs associated with ensuring that 15 year olds consult with legal counsel prior to a custodial interrogation and the waiver of any *Miranda* rights are not reimbursable in this action because those costs were already imposed by preexisting law (specifically, Statutes 2017, chapter 681) at the time the test claim statute was enacted.

[114] See Exhibit B, Finance's Comments on the Test Claim, filed March 7, 2022, pages 2-3.

[115] *Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386.

[116] *Dyna–Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387.

custodial interrogation and before the waiver of any *Miranda* rights. If viewed in isolation, this language could be interpreted as requiring the minors themselves to procure and consult with legal counsel before waiving their *Miranda* rights or being interrogated by local law enforcement. "But our courts have recognized that the meaning of isolated statutory language can be informed by and indeed must be consistent with the provisions of the relevant statute as whole."[117] And in the present matter, those provisions, the legislative history, and the statutory context all point to a different reading of subdivision (a).

First, both the codified and uncodified provisions of the test claim statute indicate that subdivision (a) is a requirement on the interrogating officer, not the minor.

Subdivision (b) indicates that subdivision (a) is a requirement on the interrogating officer by essentially penalizing that officer — not the minor — for noncompliance. If responsibility for complying with subdivision (a) lay with the minor, one would expect the penalty for violating that subdivision to also lie with the minor. However, under subdivision (b), that penalty lies with the interrogating officer. Subdivision (b) devalues evidence that an interrogating officer may obtain if subdivision (a) is violated by requiring a court to consider the effect of that violation in adjudicating the admissibility of statements procured thereby.[118] Subdivision (b) also requires the court to "consider any willful violation of subdivision (a) in determining the *credibility of a law enforcement officer*."[119] Both of these consequences weaken the case against the minor and therefore make much more sense if the onus for compliance with subdivision (a) rests with the interrogating officer. If the onus lay with the minor, these consequences would nonsensically disincentivize compliance with that subdivision.

Subdivisions (c) and (d) similarly indicate that the onus for compliance with subdivision (a) rests with the interrogating officer, not the minor. Subdivision (c) provides that section 625.6 does not apply to the admissibility of a minor's statements if "[t]he *officer* who questioned the youth reasonably believed the information the officer sought was necessary…" and "[t]he *officer's* questions were limited to those questions that were reasonably necessary to obtain that information."[120] And subdivision (d) provides that the section "does not require a *probation officer* to comply with subdivision (a) in the normal performance of the *probation officer's* duties

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[117] *People v. Valencia* (2017) 3 Cal.5th 347, 356.

[118] See *In re Anthony L.* (2019) 43 Cal.App.5th 438, 449-450. In that case, the court also concluded that the former version of Welfare and Institutions Code section 625.6 could not render a minor's inculpatory statements inadmissible because the statute that added that former section, Statutes 2017, chapter 681, had not been passed by a two-thirds vote in each house. (*Ibid.*) However, since the test claim statute *was* passed by a two-thirds vote in each house (see California Legislative Information website, https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201920200SB203 (accessed on August 18, 2022) (showing that Statutes 2020, chapter 335, passed with 32 votes in the Senate and 54 votes in the Assembly)), it is unclear whether courts will continue to interpret current section 625.6 in this manner.

[119] Emphasis added.

[120] Emphasis added.

under Section 625, 627.5, or 628."[121] Both of the provisions situate control over compliance with subdivision (a) with the interrogating officer, not the minor.

The test claim statute's uncodified provisions reinforce this reading of subdivision (a). The legislative findings in section one of the test claim statute describe minors as vulnerable and less capable than adults and declares that the purpose of the test claim statute is to protect minors facing custodial interrogations.[122] And, as these findings implicitly recognize, it is law enforcement, not the minor, who controls the situation in a custodial interrogation.[123] It would be contrary to these declarations to read section 625.6(a) as requiring these vulnerable, less capable minors to *themselves* obtain and consult with legal counsel in such an overwhelming situation.[124]

Second, the legislative history of section 625.6 similarly indicates that the section imposes its requirement on law enforcement, not the minor. The legislative history of a section includes committee analyses of the bills that enacted and amended it,[125] and here, those analyses display a clear legislative intent to impose a duty on law enforcement, not minors. The Assembly Committee on Appropriations' analysis of the test claim statute explicitly states that the bill "*requires law enforcement to provide* a person 17 years of age or younger access to legal counsel

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[121] Emphasis added.

[122] Statutes 2020, chapter 335, section 1 ("The United States Supreme Court has recognized [that] [¶] … Children are generally less mature and responsible than adults, … [¶] characteristically lack the capacity to exercise mature judgment and…[¶] are generally more vulnerable to outside influences than adults…" "The law enforcement community now widely accepts what science and the courts have recognized: that children and adolescents are much more vulnerable to psychologically coercive interrogations and other psychologically coercive dealings with the police than resilient adults experienced with the criminal justice system." "For these reasons, in situations of custodial interrogation and prior to making a waiver of rights under *Miranda v. Arizona* (1966) 384 U.S. 436, a youth under 18 years of age should consult with legal counsel to assist in their understanding of their rights and the consequences of waiving those rights.").

[123] See Statutes 2020, chapter 335, section 1. This power imbalance is inherent in a custodial setting. (See *J.D.B. v. North Carolina* (2011) 564 U.S. 261, 270 (A suspect is only "in custody" if a reasonable person in the same circumstances would not have felt at liberty to terminate the interrogation and leave.).)

[124] See Statutes 2020, chapter 335, section 1 ("Addressing the specific context of police interrogation, the United States Supreme Court observed that events that would have a minimal impact on an adult can overwhelm an early teen child, noting that no matter how sophisticated the child may be, the interrogation of a child cannot be compared to the interrogation of an adult.").

[125] *People v. Taylor* (2007) 157 Cal.App.4th 433, 438 (quoting *People v. Ledesma* (1997) 16 Cal.4th 90, 95).

before the person waives their Miranda rights."[126] Consistent with this description, committee analyses of both bills also describe those bills as imposing costs on *local governments*, not private persons facing interrogation.[127]

Third, the statutory context surrounding Welfare and Institutions Code section 625.6 also indicates that the section imposes its requirement on law enforcement, not minors. Welfare and Institutions Code section 625 provides that if a minor is taken into temporary custody, the *officer* shall advise the minor of their constitutional rights, including the right to have counsel present during interrogation and the right to have counsel appointed if the minor is unable to afford counsel. Welfare and Institutions Code section 627.5 similarly provides that if a minor is taken into custody by a probation officer, the *probation officer* shall immediately advise the minor and their parent or guardian of the minor's constitutional rights, including the right to have counsel present during any interrogation, and the right to have counsel appointed if the minor is unable to afford counsel. Section 627.5 further states that "[i]f the minor or his parent or guardian requests counsel, *the probation officer* shall notify the judge of the juvenile court of such request and counsel for the minor shall be appointed pursuant to Section 634." Welfare and Institutions Code section 627 also requires *law enforcement* to allow the minor to make a phone call to the parent and an attorney immediately after "confinement" and no later than one hour after being taken into custody. And if the minor or their parent or guardian desires but cannot afford counsel, Welfare and Institutions Code section 634 authorizes *the court* to appoint counsel at the county's expense. All of these provisions strongly suggest that responsibility for ensuring that a minor without a private attorney has counsel lies with a governmental entity and not the minor themself.

The claimant also requests reimbursement for other components of its Juvenile Miranda Duty program, which is staffed by Public Defender attorneys who are available 24 hours a day.[128] Providing 24 hour services is not required by the test claim statute, but may be proposed for inclusion in the Parameters and Guidelines, and may be approved by the Commission *if* the activity is supported by evidence in the record showing it is "reasonably necessary for the performance of the state-mandated program" in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

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[126] Exhibit E (4), Assembly Committee on Appropriations, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 1, emphasis added.

[127] Exhibit E (2), Senate Committee on Appropriations, Analysis of SB 395 (2017-2018 Regular Session), as introduced, page 1 ("**Fiscal Impact**: [¶] Local government: Major non-reimbursable local costs, potentially in the millions of dollars (local funds) annually to provide legal counsel to minors prior to custodial interrogations, to the extent local agencies (482 cities and 58 counties) incur additional costs to provide counsel and/or incur operational delays."); Exhibit E (4), Assembly Committee on Appropriations, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 1 ("**FISCAL EFFECT:** [¶] Cost pressures (Local Funds/General Fund (GF) - Proposition 30) in the low millions of dollars annually for 482 cities and 58 counties to provide legal counsel to minors ages 16 and 17 prior to custodial interrogations.").

[128] Exhibit A, Test Claim, filed December 22, 2021, page 10.

In sum, the provisions of the test claim statute, the legislative history of section 625.6, and the statutory context of that section all indicate that the legislative purpose of section 625.6(a) was to require law enforcement, not the minor, to ensure that the minor consults with legal counsel prior to a custodial interrogation and before the waiver of any *Miranda* rights. If the minor does not have private counsel,[129] counsel will be provided at the county's expense, consistent with Welfare and Institutions Code section 634. Thus, when read in the context of that legislative purpose, section 625.6(a)[130] imposes the following requirement on law enforcement, not on minors:

- Ensuring that youth, 17 years old or younger, consult with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights. In instances where the youth does not have a private attorney, this includes providing legal counsel to consult with the youth in person, by telephone, or by video conference prior to a custodial interrogation, and before the waiver of any *Miranda* rights.

b. Counties and cities are mandated by the state to comply with the test claim statute, but school districts and community college districts are not.

To be reimbursable under article XIII B, section 6 of the California Constitution, the requirements must be mandated by the state; or ordered, commanded, or legally compelled by state law.[131] Generally, a requirement is not mandated by the state if it is triggered by a local voluntary decision.[132] However, the courts have recognized the possibility that a state-mandated

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[129] Nothing in the language of section 625.6 limits the "legal counsel" with whom a minor must consult to a public defender or other government-provided counsel. Accordingly, the Commission finds that the statutory language permits a minor to consult with a private attorney if they have one. (Accord *Miranda v. Arizona* (1966) 384 U.S. 436, 472-473 (The Fifth Amendment only requires the government to provide counsel if the person being interrogated cannot afford one.)).

[130] Perhaps because this conclusion is self-evident, courts interpreting section 625.6(a) have read it as imposing its requirement on law enforcement without discussion. (See e.g. *In re Anthony L.* (2019) 43 Cal.App.5th 438, 450 (interpreting section 625.6(a) as imposing its requirement on law enforcement without discussion); *Y.C. v. Superior Court* (2021) 71 Cal.App.5th 410, 252, *as modified on denial of reh'g* (Dec. 6, 2021), review denied (Feb. 16, 2022) (same).)

[131] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 741.

[132] *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800 [514 P.3d 854, 863]; see e.g. *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 107; see also *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743 ("In *City of Merced,* the city was under no legal compulsion to resort to eminent domain—but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying voluntary

program may exist when that decision is not truly voluntary, i.e., when local government is compelled as a practical matter to perform the requirements.[133]

The test claim statute's requirements on law enforcement to ensure that a youth, 17 years old or younger, consults with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights is triggered by a law enforcement officer's decision to interrogate the youth. As explained below, although this decision is made at the local level and the triggered requirement therefore not legally compelled by state law, the decision is not truly voluntary within the meaning of article XIII B, section 6.

Case law suggests that a local decision is not truly voluntary for the purposes of article XIII B, section 6 if it is, as a practical matter, constrained by duty. In *San Diego Unified School Dist.*, the California Supreme Court suggested that a local discretionary action should not be considered voluntary if, as a practical matter, it must inevitably occur.[134] In that case, the Court was faced with statutory hearing requirements triggered by two types of school expulsions: "mandatory" expulsions, which state law required school principals to recommend whenever a student was found to be in possession of a firearm at school or at a school activity off school grounds, and "discretionary" expulsions, which state law granted school principals the authority to recommend for other conduct.[135] Although the Court confidently concluded that costs for the hearing requirements triggered by "mandatory" expulsions were reimbursable state mandated costs,[136] it hesitated to apply that same logic to deny reimbursement for the "discretionary" expulsions.[137] Instead, it cautioned that denying reimbursement whenever a requirement was triggered by a technically discretionary local action may well contravene both the intent underlying article XIII B, section 6 and past holdings,[138] stating:

> Upon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude

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education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.").

[133] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 744, 754. This form of compulsion is also referred to as "nonlegal compulsion." (See e.g. *Coast Community College District v. Commission on State Mandates* (2022) 13 Cal.5th 800 [514 P.3d 854, 867-868].)

[134] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; see *Department of Finance v. Commission on State Mandates (POBRA*) (2009) 170 Cal.App.4th 1355, 1367-1368.

[135] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 869-870.

[136] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 881-882.

[137] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888.

[138] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888.

> reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs. Indeed, it would appear that under a strict application of the language in *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, as explained above, in *Carmel Valley, supra,* 190 Cal.App.3d 521, 234 Cal.Rptr. 795, an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. (*Id.,* at pp. 537–538, 234 Cal.Rptr. 795.) The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ—and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. *Yet, under a strict application of the rule gleaned from City of Merced, supra, 153 Cal.App.3d 777, 200 Cal.Rptr. 642, such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of City of Merced that might lead to such a result.*[139]

In *Department of Finance v. Commission on State Mandates* (*POBRA)*, the Third District Court of Appeal suggested that duty is the dividing line between truly voluntary and technically discretionary decisions.[140] In that case, the court was tasked with determining whether the Public Safety Officers Procedural Bill of Rights Act (POBRA), which granted procedural protections to state and local peace officers subject to investigation, interrogation, or discipline, imposed a reimbursable state mandated program on school districts and community college districts that employ peace officers.[141] The court held that because those protections were triggered by a local discretionary decision, that statute did not impose a reimbursable state mandated program on those districts.[142] However, the court also clarified that this discretionary

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[139] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888, footnote omitted and emphasis added.

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

[141] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1358.

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

decision was *not* the district's decision to investigate, interrogate, or discipline its peace officers, but rather the district's decision to employ peace officers in the first place.[143] It explained that since counties and cities had a basic and mandatory duty to provide policing services,[144] their administration of this duty, as a practical matter, necessarily included actions such as investigating, interrogating, or disciplining its peace officers. Thus, like the "discretionary" expulsions discussed in *San Diego Unified School Dist.*, those actions and the downstream requirements imposed by the POBRA statutes could not reasonably be considered "truly voluntary" when performed by counties and cities.[145]

The same logic applies here. As the court stated in *POBRA,* counties and cities have an ordinary, principal, and mandatory duty to provide policing services within their jurisdiction. They are required by the California Constitution and state statute to employ peace officers.[146] County sheriffs are required by Government Code sections 26600 et seq. to preserve the peace, investigate public offenses, and to make arrests of persons who commit public offenses. City chiefs of police are conferred these same powers by Government Code sections 41601. And the courts have also recognized that "[l]aw enforcement officers are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties

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

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

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

[146] Article XI of the California Constitution provides for the formation of counties and cities. Section 1 states that the Legislature shall provide for an elected county sheriff. Section 5 specifies that city charters are to provide for the "government of the city police force." Government Code sections 36505 and 41601 et seq. require the city council of a general law city to appoint the chief of police, imbue that officer with "the powers conferred upon sheriffs by general law," and require deputies, police officers, and watchpersons in the city to promptly execute that officer's lawful orders.

and are faithful to the trust reposed in them"[147] and that "[p]olice and fire protection are two of the most essential and basic functions of local government."[148]

Moreover, like the student expulsions discussed in *San Diego Unified School Dist.* and the procedural protections discussed in *POBRA*, custodial interrogations must *necessarily* occur as part of a city or county's duty to provide policing services because a law enforcement officer's decision to interrogate *is constrained by that duty*. School expulsions necessarily occur as part of a school district's administration of its duty to educate students because that duty includes providing students with a safe learning environment.[149] Thus, whenever expelling a student is the best means of providing students with that safe learning environment, a school principal is duty-bound to recommend that expulsion.[150] The same goes for law enforcement. When an officer is faced with the decision of whether or not to interrogate a suspect, their discretion is similarly constrained by their sworn duty to investigate apparent criminal activity[151] and to protect the citizenry.[152]

Consequently, under the logic of *POBRA* and *San Diego Unified School Dist.,* the decision to interrogate a youth is not a truly "voluntary" local action within the meaning of article XIII B, section 6 that would preclude reimbursement for downstream statutory requirements triggered by those actions.

Although the Commission's decisions are not precedential, the Commission notes that this conclusion is consistent with its past decisions. In *Post-Conviction: DNA Court Proceedings,* 00-TC-21, the Commission similarly determined that a statute that required the court to "appoint

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[147] *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 799 (internal quotations omitted); see also *Pasos v. Los Angeles County Civil Service Commission* (2020) 52 Cal.App.5th 690, 702, *as modified on denial of reh'g* (Aug. 18, 2020); *Allen v. Payne* (1934) 1 Cal.2d 607, 608 ("From the time of the adoption of our Constitution to the present, the accepted practice has been to leave the detection of crime in the hands of sheriffs and district attorneys, and in our opinion the departure from that practice finds no support in authority or legislative policy. The ferreting out of evidence of crime is a statutory duty expressly imposed upon certain officers, having the equipment and qualified personnel to perform it."); *Christal v. Police Commission of City and County of San Francisco* (1939) 33 Cal.App.2d 564, 567.

[148] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

[149] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887 footnote 22.

[150] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 887 footnote 22.

[151] See *People v. Coston* (1990) 221 Cal.App.3d 898, 903; *McCain v. Sheridan* (1958) 160 Cal.App.2d 174, 177-178.

[152] *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 799; *Pasos v. Los Angeles County Civil Service Commission* (2020) 52 Cal.App.5th 690, 702, *as modified on denial of reh'g* (Aug. 18, 2020).

counsel to investigate and, *if appropriate*, to file a motion for DNA testing" mandated the filing of that motion.[153] In reaching that conclusion, the Commission reasoned that "an attorney's duty is 'to present his case vigorously in a manner as favorable to the client as the rules of law and professional ethics will permit'" and that "[b]ecause whether or not to file the DNA testing motion is a matter of professional judgment, the indigent defense counsel's duty to file it, if appropriate, *is not truly discretionary. Rather, it is an activity mandated by the state.*"[154]

Similarly, in its decision on reconsideration of the test claim that was at issue in *POBRA*, the Commission held that a local entity does not decide who to investigate or discipline based on the costs incurred to the entity. Instead, a local entity makes this decision, like the expulsion decisions discussed by the Supreme Court in *San Diego Unified School Dist*., to maintain the public's confidence in its police force and to protect the health, safety, and welfare of its citizens.[155]

Accordingly, the Commission finds that the test claim statute's requirement on county and city law enforcement to ensure that youths, 17 years old or younger, consult with legal counsel prior to custodial interrogation and before waiving any *Miranda* rights is not triggered by a local discretionary decision within the meaning of article XIII B, section 6, but is instead a requirement mandated by the state on counties and cities.

The same conclusion, however, does not apply to school districts or community college districts. Unlike counties and cities, school districts and community college districts are permitted, but not required, by statute to employ peace officers who supplement the general law enforcement agencies of counties and cities, and are not mandated by the state to comply with the test claim statute.[156] As noted above, the court in POBRA held that the statutes in that case did not impose a state-mandated program on school districts or community college districts because their protections were triggered by the districts' voluntary, discretionary decisions to employ peace officers.[157] The court reasoned that unlike counties and cities, which "have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction," "the districts in issue [we]re authorized, but not required, to provide their own peace officers and d[id] not have provision of police protection as an essential and basic

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[153] Exhibit E (8), Commission on State Mandates, Decision on *Post Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, https://csm.ca.gov/decisions/00tc21,01tc08sod.pdf (accessed on September 1, 2022), adopted July 28, 2006, page 13, emphasis added.

[154] Exhibit E (8), Commission on State Mandates, Decision on *Post Conviction: DNA Court Proceedings*, 00-TC-21 and 01-TC-08, https://csm.ca.gov/decisions/00tc21,01tc08sod.pdf (accessed on September 1, 2022), adopted July 28, 2006, page 13, emphasis added.

[155] Exhibit E (7), Commission on State Mandates, Decision on Reconsideration of *Peace Officer Procedural Bill of Rights,* 05-RL-4499-01, https://csm.ca.gov/decisions/4499sod.pdf (accessed on August 19, 2022), adopted April 26, 2006, page 21.

[156] Education Code sections 38000, 72330.

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

function. It [was] not essential unless there [wa]s a showing that, as a practical matter, exercising the authority to hire peace officers [wa]s the only reasonable means to carry out their core mandatory functions.[158] And here, it is not alleged and there is no evidence in the record that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means for school districts and community college districts to carry out their core mandatory function to provide educational services.

Accordingly, the Commission finds that the test claim statute imposes state-mandated duties only on counties and cities.

2. The Test Claim Statute Imposes a New Program or Higher Level of Service With Respect to 16 and 17 Year Olds Except For Those Who Affirmatively Request To Consult With Retained Legal Counsel.

In order for the state-mandated activity to constitute a new program or higher level of service, it must be new when compared with the legal requirements in effect immediately before the enactment of the test claim statute and increase the level of service provided to the public.[159] In addition, the requirement must either carry out the governmental function of providing a service to the public, or impose unique requirements on local agencies or school districts that do not apply generally to all residents and entities in the state.[160]

As discussed below, the Commission finds that the requirement is new and constitutes a new program or higher level of service with respect to 16 and 17 year olds except for those who affirmatively request to consult with retained legal counsel. The requirement is new, except to the extent that it (1) requires law enforcement to allow minors who invoke their right to consult with retained legal counsel to consult with their counsel upon request or (2) requires law enforcement to ensure that youths 15 years or younger consult with legal counsel prior to a custodial interrogation.

For decades, the Fifth Amendment to the U.S. Constitution has required state and local law enforcement to provide an individual in custody with legal counsel upon that individual's affirmative request and prohibited interrogation or further interrogation of that individual until counsel has been provided or the individual has validly waived their right thereto.[161] As

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

[159] *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[160] *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).

[161] See *Malloy v. Hogan* (1964) 378 U.S. 1, 11 (Fifth Amendment right against self-incrimination applies against both state and federal authorities); see e.g. *Miranda v. Arizona* (1966) 384 U.S. 436, 494-498 (applying the Fifth Amendment right against self-incrimination to interrogations conducted by local police officers). If an individual has a private attorney, they may of course consult with that attorney instead of relying on government-appointed counsel. (*Miranda v. Arizona* (1966) 384 U.S. 436, 471-473.)

described in the Background, Welfare and Institutions Code sections 625 and 627.5 have long imposed the same requirements on local law enforcement agencies with respect to minors in temporary custody, as well.[162] However, Welfare and Institutions Code section 634 provides that the appointment of counsel to minors who appear without counsel occurs later at the detention hearing. The detention hearing is required to be provided "before the expiration of the next judicial day after a petition to declare the minor a ward or dependent child has been filed."[163] Thus, under prior law, if a minor requested counsel but did have not have counsel at the interrogation stage, local law enforcement had no choice but to refrain from interrogating the minor. Thus, the only minors who would have the opportunity to consult with counsel prior to the detention hearing were the minors who exercised their right to consult with retained counsel. Accordingly, the requirement of the test claim statute is *not* new when minors affirmatively request to consult with retained counsel.

In addition, prior to the test claim statute, Welfare and Institutions Code section 625.6, as added by Statutes 2017, chapter 681, required law enforcement to ensure that "youth[s] 15 years or younger" consult with legal counsel before custodial interrogation and the waiver of any *Miranda* rights, with certain exceptions, even when the youths did not request counsel.[164] By the plain language of the statute, this includes youths up to and including those with a maximum age of 15 years. Thus, the requirement imposed by the test claim statute for youths 15 years or younger is *not* new.[165]

In sum, the requirement imposed by the test claim statute is *not* new with respect to all youths age 15 and under and those youths 16 or 17 years of age who affirmatively request to consult with retained counsel.

State requirements that build upon existing requirements are "new," and go beyond just increasing the costs of existing services, when they increase the actual level or quality of

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[162] Statutes 1967, chapter 1355.

[163] Welfare and Institutions Code section 632.

[164] As discussed above, section 625.6, as amended by the test claim statute, required law enforcement, not the youths themselves, to ensure that youths consulted with legal counsel prior to a custodial interrogation and the waiver of any *Miranda* rights. As the relevant statutory language, statutory context, and legislative history of the version of the section originally added by Statutes 2017, chapter 681, is generally the same as that discussed above, it is the Commission's view that this prior version of the section also imposed its requirement on law enforcement, not the youths themselves. See also Welfare and Institutions Code section 627.5 (If a minor in temporary custody or their parent or guardian requests counsel after a probation officer advises the minor of their *Miranda* rights, the probation officer must notify the judge of the juvenile court of the request and counsel for the minor must be appointed pursuant to Welfare and Institutions Code section 634.).

[165] Accordingly, any costs associated with ensuring that 15 year olds consult with legal counsel prior to a custodial interrogation and waiver of any *Miranda* rights are not reimbursable under this test claim.

governmental services provided.[166] And in *County of San Diego v. Commission on State Mandates*, the California Supreme Court suggested that such increases may include the expansion of existing state programs to serve additional populations.[167]

Here, the test claim statute increases the actual level or quality of governmental services provided by expanding the population which law enforcement is required to ensure actually consult with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights to include 16 and 17 year olds. Prior to the test claim statute, youths of 16 or 17 years of age had to either affirmatively request, or have their parent or legal guardian affirmatively request, to consult with retained or appointed legal counsel in order to consult with counsel prior to a custodial interrogation and they could waive their *Miranda* rights without any legal consultation.[168] But as committee analyses of the test claim statute explain, this opt-in system was insufficient to fully protect those minors' Fifth Amendment rights.[169] Because minors are less capable than adults at understanding their constitutional rights, more impulsive, more easily influenced by others (especially by figures of authority), more sensitive to rewards (especially immediate rewards), and less able to weigh in on the long-term consequences of their actions, they are much more likely to waive their Fifth Amendment rights without fully understanding them and, in the ensuing custodial interrogation, to also falsely confess to crimes that they did not commit.[170] The test claim statute sought to remedy this situation by *increasing* the level of governmental protections afforded to minors facing custodial interrogations, specifically, by ensuring that 16 and 17 year olds understand their *Miranda* rights before waiving them and thereby minimizing false confessions extracted from those minors in custodial interrogations[171] and protecting them from "psychologically coercive interrogations and other psychologically coercive dealings with the police."[172] Thus, the Commission finds that replacing consultations available only upon request with mandatory, unwaivable legal consultations is new and represents an increase in the actual level or quality of governmental services provided to 16 and 17 year olds who do not affirmatively request to speak with retained counsel, and is not merely an increase in costs.

Although the Commission's decisions are not precedential, the Commission notes that this conclusion is consistent with its past decisions. In its Decision on *Domestic Violence Arrests*

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[166] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

[167] See *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 217.

[168] Welfare and Institutions Code sections 625, 627.5; *Miranda v. Arizona* (1966) 384 U.S. 436, 470-474.

[169] Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, pages 2-4.

[170] Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, page 4.

[171] See Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, pages 2-4.

[172] Statutes 2020, chapter 335, section 1.

and Victim Assistance, 98-TC-14, the Commission determined that providing an existing victim card to victims of additional crimes constituted a new program or higher level of service.[173] And in its Decision on *Permanent Absent Voters II (As Amended),* 03-TC-11, the Commission similarly determined that expanding eligibility for permanent absent voter status to all voters went "beyond creating a higher level of service in an existing program. . . ."[174]

The Commission's conclusion in this Test Claim is also not inconsistent with its Decision in *Extended Conditional Voter Registration*, 20-TC-02. In that Test Claim, the Commission concluded that a statute that required counties to provide existing voter services to people requesting those services at additional locations, but did not expand the times for which these services are provided by the counties or require the counties to create new locations for voters to access those services, did not impose a reimbursable state-mandated program because county elections officials already had a preexisting duty to provide those services to any voter requesting them.[175] That statute is distinguishable from the test claim statute in that it did not increase the population entitled to existing services, but rather made it more convenient for all voters to access the same services by making the services available at additional locations. Here, in contrast, the test claim statute requires county and city law enforcement to affirmatively ensure a new population of youth that do not request counsel actually consults with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights, which as indicated above, is an increase in the level of service provided to the public.

In addition, the test claim statute imposes unique requirements on local agencies that do not generally apply to all residents and entities in the state.[176] The plain language of the test claim statute indicates that its reach is limited to governmental entities. As amended by the test claim statute, Welfare and Institutions Code section 625.6 only requires consultations to be provided to minors prior to a "custodial interrogation" or "the waiver of any Miranda rights." A "custodial interrogation" is a uniquely governmental action defined as "questioning initiated by *law enforcement officers* after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[177] "Miranda rights" are similarly uniquely

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[173] Exhibit E (6), Commission on State Mandates, Decision on *Domestic Violence Arrests and Victim Assistance*, 98-TC-14, https://csm.ca.gov/decisions/doc44.pdf (accessed on September 1, 2022), adopted December 9, 2004, pages 17-18.

[174] Exhibit E (9), Commission on State Mandates, Decision on *Permanent Absent Voter II (As Amended)*, 03-TC-11, https://csm.ca.gov/decisions/03tc11sod.pdf (accessed on September 1, 2022), adopted July 28, 2006, page 9.

[175] Exhibit E (10), Commission on State Mandates, Decision on *Extended Conditional Voter Registration,* 20-TC-02, https://csm.ca.gov/decisions/20tc02-120621.pdf (accessed on September 1, 2022), adopted December 3, 2021, pages 42-54.

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

[177] *Miranda v. Arizona* (1966) 38 U.S. 436, 444, emphasis added.

governmental in that they are rights constitutionally guaranteed against the government.[178] Thus, the test claim statute's requirement, which applies only in this uniquely governmental context, is also unique to government.

Consequently, section 625.6(a) imposes a new program or higher level of service within the meaning of article XIII B, section 6 on counties and cities to perform the following activity:

- Ensure that youths, ages 16 and 17, *except for those who affirmatively request to consult with retained counsel*, consult with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights. In instances where the youth does not exercise their right to retain a private attorney, this includes providing legal counsel to consult with the youth in person, by telephone, or by video conference prior to a custodial interrogation, and before the waiver of any *Miranda* rights.

3. The Test Claim Statute Results in Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 and Government Code Section 17514.

The final criteria that must be met in order for the mandated new requirement to constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution is that the mandated activity must result in a local agency incurring increased costs within the meaning of Government Code section 17514. That section defines "costs mandated by the state" as "any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." Government Code section 17564 also provides that "[n]o claim shall be made pursuant to Sections 17551, . . ., nor shall any payment be made on claims submitted pursuant to Sections 17551 or 17561, . . . , unless these claims exceed one thousand dollars ($1,000)." Even if the claims exceed $1,000, however, the claimed costs are not reimbursable if an exception identified in Government Code section 17556 applies.

Here, as explained below, there is substantial evidence that the claimant incurred over $1,000 in complying with the test claim statute, as required by Government Code section 17564. Further, although Statutes 2020, chapter 92 (AB 1869) and Penal Code section 987.6 provide potential sources of offsetting revenue to counties, that revenue is not "specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" such that Government Code section 17556(e) would preclude reimbursement. Moreover, none of the other exceptions to reimbursement in Government Code section 17556 applies. Consequently, the Commission finds that the test claim statute imposes increased costs mandated by the state.

[178] See *Miranda v. Arizona* (1966) 38 U.S. 436, 440-444; see also Exhibit E (3), Assembly Committee on Public Safety, Analysis of SB 203 (2019-2020 Regular Session), as amended July 27, 2020, pages 3-4.

a. There is substantial evidence that the claimant incurred over $1,000 in costs to perform the mandated activities.

The claimant asserts that its total increased costs to comply with the test claim statute in the 2020-2021 fiscal year were $5,821.45.[179] These costs are "for the Miranda consultations" that the claimant's Public Defender's Office provides pursuant to its Juvenile Miranda Duty program.[180]

Although Finance observes,[181] and the claimant concedes,[182] that these costs include the provision of legal consultations to youth ages 15 years of age or younger, which had already been required under preexisting law, the claimant has not indicated what part of the initially claimed costs were incurred with respect to juveniles 16 or 17 years of age. The claimant has also not indicated whether any part of the initially claimed costs were incurred with respect to juveniles who affirmatively requested a consultation with an attorney before custodial interrogation, as required by existing state and federal law.

However, even without a precise figure, the claimant's evidence, along with information that is officially noticed,[183] is sufficient to support a finding that the county's costs with respect to such juveniles did exceed $1,000 in the 2020-2021 fiscal year. Juveniles waive their *Miranda* rights at much higher rates than adults.[184] Also, just over two-thirds of juvenile arrests in 2019 were of juveniles 15 to 17 years of age.[185] Thus, a substantial portion of the claimant's $5,821.45 cost of

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[179] Exhibit A, Test Claim, filed December 22, 2021, pages 11, 18-20 (Declaration of Cris Mercurio, Head Deputy of the Juvenile Division of the County of Los Angeles Public Defender's Office, para. 15 and Attachment A), and 21 (Declaration of Sung Lee, Departmental Finance Manager II with the County of Los Angeles Public Defender's Office, paras. 3 and 5).

[180] Exhibit A, Test Claim, filed December 22, 2021, pages 11, 18-20 (Declaration of Cris Mercurio, Head Deputy of the Juvenile Division of the County of Los Angeles Public Defender's Office, para. 15 and Attachment A), and 21 (Declaration of Sung Lee, Departmental Finance Manager II with the County of Los Angeles Public Defender's Office, para. 3).

[181] Exhibit B, Finance's Comments, filed March 7, 2022, pages 1-2.

[182] Exhibit C, Claimant's Rebuttal Comments, filed April 6, 2022, page 2.

[183] California Code of Regulations, title 2, section 1187.5(c) ("Official notice may be taken in the manner and of the information described in Government Code Section 11515."); see Government Code section 11515 and Evidence Code section 452(g) and (h).

[184] Exhibit E (11), Scott, Duell and Steinberg, *Brain Development, Social Context and Justice Policy*, 57 Washington University Journal of Law & Policy (2018), page 36. The Commission notes that it need not take separate judicial notice of this study because it is already cited and discussed in the legislative history of Statutes 2020, chapter 335. (See *Voris v. Lampert* (2019) 7 Cal.5th 1141, 1147 fn. 5; Gov. Code, § 11515; Cal. Code. Regs. tit. 2, § 1187.5(c).)

[185] Exhibit E (12), U.S. Department of Justice, Office of Justice Programs, Juvenile Justice Statistics National Report Series Bulletin (May 2021), https://ojjdp.ojp.gov/publications/juvenile-arrests-2019.pdf (accessed on July 7, 2022), page 3. Pursuant to California Code of Regulations, title 2, section 1187.5(c), Government Code section

providing legal consultations to minors 17 years of age or younger were for consultations provided to minors 16 or 17 years of age. Thus, substantial evidence supports the claimant's allegation that its costs of ensuring that youths, ages 16 and 17 years old, except for those who affirmatively request to consult with retained legal counsel, consult with legal counsel prior to a custodial interrogation or the waiver of any *Miranda* rights exceed $1,000.

b. Although Government Code section 17556(e) does not apply to deny the Test Claim, Statutes 2020, chapter 92 (AB 1869) and Penal Code section 987.6 may provide potential offsetting revenues to counties if received and used for this program. No other exception to reimbursement in Government Code section 17556 applies to deny this Test Claim.

Under Government Code section 17556(e), the Commission is prohibited from finding costs mandated by the state if "… an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

As explained below, Statutes 2020, chapter 92 and Penal Code section 987.6 may provide potential offsetting revenues to counties if received and used to cover the costs of the state-mandated program. However, as neither of these funding sources are sufficient to fully fund the costs of the state-mandated program, Government Code section 17556(e) does not apply to deny this claim.

In its comments on this Test Claim, Finance argues that Statutes 2020, chapter 92 (AB 1869), which repealed various fees, including public defender fees, and annually appropriates $65 million to backfill counties for the lost revenue, "may serve as an offset to any state-mandated costs incurred by the Claimant."[186]

In response, the claimant asserts that the public defender fees that were eliminated by Statutes 2020, chapter 92 would not have covered its costs in providing legal counsel to juveniles prior to custodial interrogation, as the eliminated fees related to court-appointed lawyers and therefore would not have covered legal consultations, such as those required by the test claim statute, which are provided prior to the appointment of counsel at the arraignment stage of a criminal proceeding.[187] Accordingly, any backfill provided pursuant to that bill would not "provide[] for additional revenue specifically intended to fund the costs of the state mandate" within the meaning of Government Code section 17556(e).

11515, and Evidence Code section 452(g) and (h), the Commission takes notice of statistical data released by the U.S. Department of Justice. (See *Powell v. Superior Court* (1991) 232 Cal.App.3d 785, 795 fn. 7, modified (July 30, 1991).)

[186] Exhibit B, Finance's Comments, filed March 7, 2022, page 2.

[187] Exhibit C, Claimant's Rebuttal Comments, filed April 6, 2022, page 2; see also Exhibit A, Test Claim, filed December 22, 2021, pages 10 and 17 (Declaration of Cris Mercurio, Head Deputy of the Juvenile Division of the County of Los Angeles Public Defender's Office, para. 7).

The relevant fees that Statutes 2020, chapter 92 repealed were provided in Penal Code section 987.4 and Government Code section 27712. Prior to Statutes 2020, chapter 92, Penal Code section 987.4 authorized a court to order the parent or guardian of a minor represented by the public defender or assigned counsel in a criminal proceeding to reimburse the county for its expenses in providing that counsel if the court determines that the parent or guardian has the ability to pay.[188] Government Code section 27712 similarly authorized a court to order a person provided legal assistance by the public defender or assigned counsel "in any case in which a party is provided legal assistance" to reimburse the county its expenses in providing that counsel if the court determines, upon conclusion of the proceedings or upon withdrawal of the public defender or counsel, that the person has the ability to pay.[189]

Statutes 2020, chapter 92, repealed these and other fees effective July 1, 2021. To backfill county revenues lost from that repeal, the bill annually appropriated $65 million from the General Fund to the Controller for the 2021–2022 to 2025–2026 fiscal years.[190] Under a subsequent bill, Statutes 2021, chapter 79 (AB 143), these moneys must be allocated to counties based on their average adult populations, average felony and misdemeanor arrests, and average traffic and nontraffic felony and misdemeanor filings, as specified.

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[188] Prior to Statutes 2020, chapter 92, Penal Code section 987.4, as added by Statutes 1970, chapter 723, provided, in full:

> When the public defender or an assigned counsel represents a person who is a minor in a criminal proceeding, at the expense of a county, the court may order the parent or guardian of such minor to reimburse the county for all or any part of such expense, if it determines that the parent or guardian has the ability to pay such expense.

[189] Prior to Statutes 2020, chapter 92, Government Code section 27712, as added by Statutes 1985, chapter 1485, provided, in relevant part:

> In any case in which a party is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the proceedings, or upon the withdrawal of the public defender or private counsel, after a hearing on the matter, the court may make a determination of the ability of the party to pay all or a portion of the cost of such legal assistance. … If the court determines, or upon petition by the county financial evaluation officer is satisfied, that the party has the ability to pay all or part of the cost, it shall order the party to pay the sum to the county in any installments and manner which it believes reasonable and compatible with the party's ability to pay. …

[190] Statutes 2020, chapter 92, section 67 ("…The sum of sixty-five million dollars ($65,000,000) is hereby annually appropriated from the General Fund to the Controller beginning in the 2021–22 fiscal year to the 2025–26 fiscal year, inclusive, to backfill revenues lost from the repeal of those fees specified in this act, unless future legislation extends the provisions of this act. These funds are appropriated to the Controller for allocation to counties according to a schedule provided by the Department of Finance….").

The Commission finds that a portion of the costs mandated by the state in this case on counties could have been offset by those former fees and therefore, the state funds appropriated by Statutes 2020, chapter 92 and Statutes 2021, chapter 79, to backfill the fees may provide potential offsetting revenues to counties. As stated above, the claimant's argument as to why those fees are inapplicable is that custodial interrogations occur before the Public Defender is appointed at the arraignment stage of a criminal proceeding.[191] But while this may be the order of events in a typical situation, it is not necessarily true for all situations. In *McNeil v. Wisconsin,* for example, the U.S. Supreme Court addressed a situation where a person was interrogated in custody multiple times after criminal proceedings against him had already commenced.[192] Thus, if a minor's appointed counsel provides consultation pursuant to the test claim statute, and the minor or the minor's parent or guardian has the ability to pay for all or a part of that consultation, then former Penal Code section 987.4, which authorized a court to order the minor's parent or guardian with the ability to pay to provide reimbursement "[w]hen the public defender or an assigned counsel represents a person who is a minor in a criminal proceeding, at the expense of a county," and former Government Code section 27712, which required a court to order a party who is provided legal assistance through a public defender or appointed counsel in any case to reimburse the county for the cost of that assistance to the extent the party has the ability to pay, would have authorized the county to recoup at least some of its costs of providing that consultation.

Consequently, the Commission finds that the $65,000,000 appropriated by Statutes 2020, chapter 92 may provide potential offsetting revenues to the extent that the funding is provided to backfill a county for fees that it could have collected under former Penal Code section 987.4 or former Government Code section 27712 and used by a county to partially offset its costs of ensuring that a youth, 16 or 17 years of age, who has been arraigned, is subject to a subsequent custodial interrogation, and does not request counsel,[193] consults with legal counsel prior to that subsequent custodial interrogation or the wavier of any *Miranda* rights.

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[191] Exhibit C, Claimant's Rebuttal Comments, filed April 6, 2022, page 2; see also Exhibit A, Test Claim, filed December 22, 2021, pages 10 and 17 (Declaration of Cris Mercurio, Head Deputy of the Juvenile Division of the County of Los Angeles Public Defender's Office, para. 7).

[192] *McNeil v. Wisconsin* (1991) 501 U.S. 171, 173-174 (the defendant was interrogated in custody multiple times regarding a murder in a different jurisdiction after criminal proceedings against him had already commenced on the unrelated crime of armed robbery).

[193] As the U.S. Supreme Court explains in *McNeil v. Wisconsin*, a person who invokes their Sixth Amendment right to criminal defense counsel does not thereby automatically invoke their Fifth Amendment right to counsel with respect to all subsequent custodial interrogations. (*McNeil v. Wisconsin* (1991) 501 U.S. 171, 178 ("To invoke the Sixth Amendment interest is, as a matter of fact, not to invoke the *Miranda–Edwards* interest. One might be quite willing to speak to the police without counsel present concerning many matters, but not the matter under prosecution. It can be said, perhaps, that it is likely that one who has asked for counsel's assistance in defending against a prosecution would want counsel present for all custodial interrogation, even interrogation unrelated to the charge. [But t]hat is not necessarily true…").)

However, the costs of providing consultations to minors who do not have criminal proceedings against them or whose parents or guardians cannot afford to pay for the consultations, are not covered by those prior fees. In addition, even if the funds can be used, there is no requirement that a county use the funds to pay for the state-mandated program here. Accordingly, funding that the claimant receives pursuant to Statutes 2020, chapter 92, to backfill revenues lost due to the repeal of those fees is not "specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" such that Government Code section 17556(e) would apply to deny the claim.

In addition, Penal Code section 987.6 requires the Director of Finance, from funds made available, to reimburse counties for costs up to ten percent of the amounts actually expended in providing counsel for persons charged with violations of state criminal law or detained under the Lanterman-Petris-Short Act.[194] This funding could be used by a claimant when the test claim statute requires county law enforcement to ensure that a juvenile who has already been charged with a violation of state criminal law consults with legal counsel prior to a custodial interrogation or the waiver of any *Miranda* rights.[195]

However, Penal Code section 987.6 was not specifically intended to fund the costs of the state-mandated program in an amount sufficient to fund the cost of the mandate. Any funding received under that section is necessarily insufficient to fund the full cost of the state-mandated program because (1) not all 16 and 17 years olds that undergo custodial interrogations are charged with crimes or detained under the Lanterman-Petris-Short Act, (2) not all crimes are state law violations, and (3) regardless, reimbursement under this provision is limited to 10% of the county's actual costs. Furthermore, there is no guarantee that funding will always be available to Finance for these purposes. As the Declaration of Sung Lee (Departmental Finance Manager II with the County of Los Angeles Public Defender's Office) states, "The County has not received any local, State, or federal funding to offset the increased direct and indirect costs associated with the mandatory provision of legal counsel to arrested or in-custody youths under

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[194] Penal Code section 987.6, as last amended by Statutes 1970, chapter 723, states the following:

(a) From any state moneys made available to it for such purpose, the Department of Finance shall, pursuant to this section, pay to the counties an amount not to exceed 10 percent of the amounts actually expended by the counties in providing counsel in accordance with the law whether by public defender, assigned counsel, or both, for persons charged with violations of state criminal law or involuntarily detained under the Lanterman-Petris-Short Act, Division 5 (commencing with Section 5000) of the Welfare and Institutions Code, who desire, but are unable to afford, counsel.

(b) Application for payment shall be made in such manner and at such times as prescribed by the Department of Finance and the department may adopt rules necessary or appropriate to carry out the purposes of this section.

[195] See e.g. *McNeil v. Wisconsin* (1991) 501 U.S. 171, 173-174 and 176-179 (addressing a situation in which a suspect was interrogated in custody after a public defender was appointed to represent him and discussing the interaction of the rights to counsel under the Fifth and Sixth Amendments under such circumstances).

17 years of age or younger pursuant to SB 203."[196] This would presumably include any funding received under Penal Code section 987.6. And Finance has not filed evidenced rebutting that allegation.[197]

Consequently, although funding pursuant to Penal Code section 987.6 may provide potential offsetting revenues to counties if received and used for the mandate, it is not "specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate" such that Government Code section 17556(e) would apply to deny the claim. These sources of potential offsetting revenue, however, will be identified in the Parameters and Guidelines.

c. None of the other exceptions to reimbursement in Government Code section 17556 apply.

The other provisions of Government Code section 17556 prohibit the Commission from finding costs mandated by the state if the Commission finds (1) the claimant requested legislative authority for the program, (2) the test claim statute affirmed a mandate that has been declared existing law, (3) the local agency has fee authority sufficient to pay for the mandated program or increased level of service, (4) the test claim statute imposes duties that are necessary to implement a ballot measure, or (5) the test claim statue created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, as specified.[198]

Here there are no facts or law to suggest that any of these exceptions are applicable. There is no evidence that the claimant requested legislative authority for the program and no law suggesting that the test claim statute affirmed a mandate that has been declared existing law, that the claimant has fee authority sufficient to pay for costs imposed by the test claim statute, or that the test claim statute imposes a duty necessary to implement a ballot measure. And the plain language of the test claim statute does not create or eliminate a crime or infraction or change the penalty therefor. The plain language of the test claim statute merely requires law enforcement to ensure that minors consult with legal counsel prior to a custodial interrogation and the waiver of any *Miranda* rights. While the consequences for noncompliance with this requirement may make it less *likely* that the minor will be convicted of a crime or infraction,[199] this is not the same as creating, eliminating, or changing the penalty for any crime or infraction.

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[196] Exhibit A, Test Claim, filed December 22, 2021, page 21 (Declaration of Sung Lee, Departmental Finance Manager II with the County of Los Angeles Public Defender's Office, para. 6).

[197] See *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 769, *as modified on denial of reh'g* (Nov. 16, 2016).

[198] See also California Constitution article XIII B, section 6(a)(2) ("the Legislature may, but need not, provide a subvention of funds for … [¶][l]egislation defining a new crime or changing an existing definition of a crime.").

[199] Under Welfare and Institutions Code section 625.6(b), "The court shall, in adjudicating the admissibility of statements of a youth 17 years of age or younger made during or after a custodial interrogation, consider the effect of failure to comply with subdivision (a) and, additionally, shall

Accordingly, the Commission finds that the test claim statute imposes increased costs mandated by the state.

V. Conclusion

Based on the foregoing analysis, the Commission approves this Test Claim and finds that Welfare and Institutions Code section 625.6(a), as amended by Statutes 2020, chapter 335, imposes a reimbursable state-mandated program only on counties and cities, beginning January 1, 2021, to perform the following activity:

- Ensure that youths, ages 16 and 17, *except for those who affirmatively request to consult with retained legal counsel,* consult with legal counsel prior to custodial interrogation and before the waiver of any *Miranda* rights. In instances where the youth does not exercise their right to retain a private attorney, this includes providing legal counsel to consult with the youth in person, by telephone, or by video conference prior to a custodial interrogation, and before the waiver of any *Miranda* rights.[200]

The following state funds will be identified in the Parameters and Guidelines as potential offsetting revenues:

- Funding appropriated from the General Fund by Statutes 2020, chapter 92 (AB 1869) to backfill a county for the revenue lost due to the repeal of former Penal Code section 987.4 and former Government Code section 27712, which provided funding for the costs of defense counsel and legal assistance in criminal proceedings, to the extent that the funds are used to offset a county's costs to comply with the mandate.
- Funding made available to counties pursuant to Penal Code section 987.6 for providing legal assistance for persons charged with violations of state criminal law or involuntarily detained under the Lanterman-Petris-Short Act and used to offset a county's costs to comply with the mandate.

Reimbursement is not required in the following situations:

- When the 16 or 17 year old who affirmatively requests to consult with retained private counsel prior to interrogation and before waiver of any *Miranda* rights, which is required by existing state and federal law.[201]
- For school districts or community college districts, who are authorized but not required by state law to employ peace officers.[202]

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consider any willful violation of subdivision (a) in determining the credibility of a law enforcement officer under Section 780 of the Evidence Code."

[200] Welfare and Institutions Code section 625.6(a).

[201] Welfare and Institutions Code sections 625, 627.5; *Miranda v. Arizona* (1966) 384 U.S. 436, 470-473.

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

- When the officer who questioned the youth reasonably believed the information the officer sought was necessary to protect life or property from an imminent threat and the officer's questions were limited to those questions that were reasonably necessary to obtain that information.[203]
- In the normal performance of a probation officer's duties under Welfare and Institutions Code section 625, 627.5, or 628.[204]

[203] Welfare and Institutions Code section 625.6(c)(2).

[204] Welfare and Institutions Code section 625.6(d).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 31, 2023, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date issued January 31, 2023**
- **Decision adopted January 27, 2023**

  Juveniles: Custodial Interrogation, 21-TC-01
  Welfare and Institutions Code Section 625.6 as Amended by Statutes 2020, Chapter 335, Section 2 (SB 203)
  County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 31, 2023 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/12/23

Claim Number: 21-TC-01

Matter: Juveniles: Custodial Interrogation

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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