

BACKGROUND

The test claim legislation (Penal Code sections 290 and 290.4¹) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a “900” telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn “may” then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

Claimant’s Position

Claimant contends that the test claim legislation imposes a reimbursable state mandate for the following activities:

1. Registration (§290, subdivision (a))
2. Record Retention (§290, subdivision (o))
3. Reporting to the Department of Justice (§290, subdivisions (b)(2), (e)(3) and (f)(1))
4. Records Destruction (§290, subdivision (d)(5))
5. Notification of Change of Address (§290, subdivision (f))
6. Notice of Prohibited Conduct (§290, subdivision (l)(1))
7. Disclosure of Information to the Public (§290, subdivision (m))
8. Public Access to CD-ROM & File Maintenance (§290.4, subdivision (a)(4)(A))

Department of Finance’s Position

Department of Finance concedes that the test claim legislation may result in additional costs to local law enforcement agencies. Nonetheless, Department of Finance contends that these costs are not reimbursable, because the test claim legislation results in “costs mandated by the federal government.” Specifically, Department of Finance asserts that the test claim legislation does no more than implement federal law relating to the public disclosure of the identity of certain sex offenders. Department of Finance contends:

1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a

¹ All further statutory references are to the Penal Code unless otherwise indicated.

federal law or regulation and resulted in “costs mandated by the federal government,” unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

2. Section 17513 of that Code defines “costs mandated by the federal government” as “...Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation.” “Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. “Costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

COMMISSION’S FINDINGS

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create a higher level of service over the former required level of service. The California Supreme Court has defined the word “program,” subject to article XIII B, section 6 of the California Constitution, as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose “costs mandated by the state.”²

The analysis is divided into two parts. Part 1 concerns new crimes and new timelines that an individual must register for as a convicted sex offender with the local law enforcement agency. Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a “new program or higher level of service” and impose “costs mandated by the state” on local law enforcement agencies.

² Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

PART 1 –REGISTRATION FOR NEW CRIMES AND TIMELINES

The only issue presented by Part 1, “Registration for New Crimes and Timelines,” is whether this portion of the test claim legislation creates a new crime and thus does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

Article XIII B, section 6 of the California Constitution provides that the Legislature may not provide subvention of funds for mandates that define a new crime or change the existing definition of a crime. Section 6 specifically states:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected
- (b) Legislation **defining a new crime or changing an existing definition of a crime**; or [Emphasis added.]
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Article XIII B, section 6 was codified by Government Code section 17556, subdivision (g), and provides that there are no “costs mandated by the state” when:

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

Claimant contends that the registration requirements in the test claim legislation, section 290, subdivision (a), which includes the duty to register and the time periods in which to register are a reimbursable state mandated program. As described below, the majority of crimes identified in the test claim legislation are not new crimes and have imposed a duty to register on convicted sex offenders for over fifty years. However, the test claim legislation has added some additional crimes that require registration by certain convicted sex offenders. If these individuals fail to register as a sex offender within a specific time period, the test claim legislation states that they are now guilty of a misdemeanor, felony and/or a continuing offense.

- **New Crimes That Require Registration**

Under prior law, any person, since July 1, 1944, who has been convicted in any court in California, another state or a federal or military court who has been released, discharged or paroled or who has been determined to be a mentally disordered sex offender must register under section 290 if convicted under the following offenses:

kidnapping; assault to commit rape, sodomy or oral copulation; aiding or abetting rape; lewd or lascivious acts involving children; penetration by a foreign object; sexual battery (includes seriously disabled or medically incapacitated victims); rape with a person who cannot give consent because of a mental or physical disability; rape against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another; rape when a person cannot resist because of intoxication or anesthetic; rape when the person is unconscious; rape by threat of future harm; spousal rape; procurement; procurement of a child; abduction of a minor for prostitution; incest; sodomy; oral copulation; continuous sexual abuse of a child; production, distribution or exhibition of obscene matter; sexual exploitation of a child; employment of a minor in the sale or distribution of obscene matter or production of pornography; advertisement of obscene matters depicting minors; possession or control of child pornography; annoying or molesting children; loitering around public, open toilets for the purpose of soliciting any lewd or lascivious or unlawful act; indecent exposure; any felony violation for sending harmful matter to a minor or any crime that a court finds was committed as a result of sexual compulsion or for the purpose of sexual gratification.³

However, the test claim legislation⁴ now has expanded the list of crimes that require registration by convicted sex offenders and has essentially created a "new" crime, if individuals convicted of the below offenses fails to register within a specific time frame:

kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object⁵ as well as pimping, pandering and aggravated sexual assault of a child.⁶

If the offender fails to register as a sex offender for these new crimes, then the offender is guilty of a misdemeanor, felony and/or a continuing offense. Specifically, section 290 of the test claim legislation, subdivision (g)(1), provides:

Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

In addition, subdivision (g)(2) provides:

³ Penal Code sections 207; 220; 264.1; 288; 272; 289; 243.4; 261, subdivision (a)(1); 261, subdivision (a)(2); 261, subdivision (a)(3); 261, subdivision (a)(4); 261, subdivision (a)(6); 262, subdivision (a)(1); 266; 266j; 267; 285; 286; 288a; 288.5; 311.2; 311.3; 311.4; 311.10; 311.11; 247, subdivision (a); 647, subdivision (d); 314; 288.2 and 290, subdivision (E).

⁴ Penal Code section 290, subdivision (a)(2)(A)-(E).

⁵ Penal Code sections 209, 261, 286, 288, 288a, and 289, Statutes of 1997, Chapter 817.

⁶ Penal Code sections 266, subdivisions (h)(b); 266, subdivisions (i)(b) and 269, Statutes of 1997, Chapter 818.

[A]ny person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

Also, subdivision (g)(7) provides:

Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

Thus, under prior law, a sex offender convicted of kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object as well as pimping, pandering and aggravated sexual assault of a child, did not have to register as a sex offender. Now, under the test claim legislation, if these convicted sex offenders fail to register, they will be guilty of a misdemeanor, felony and/or a continuing offense.

Nonetheless, claimant contends that the test claim legislation only “expands the requirement of registration for sex offenders” and does not create a new crime or change the existing definition of a crime. Claimant’s contention is correct inasmuch as the list of crimes in which a sex offender must register for has been expanded. However, claimant’s analysis of this issue is short sided. Claimant fails to recognize that by adding these crimes the test claim legislation has created a “new” crime. As stated above, if these convicted sex offenders fail to register as a sex offender, they will now be guilty of a misdemeanor, felony and/or a continuing offense; whereas before the test claim legislation, they would not have been guilty of a crime. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

- **New Time Periods in Which to Register**

Section 290 of the test claim legislation has also created new time periods in which certain convicted sex offenders must register including when an offender has multiple addresses, is a sexually violent predator or changes his or her name. Like the above new crimes, failure to register within the proscribed timelines is a misdemeanor, felony and/or a continuing offense.

Specifically, section 290 of the test claim legislation requires a convicted sex offender who has more than one residence to register in each jurisdiction where the offender resides. If the offender resides in one jurisdiction but has multiple addresses in that jurisdiction, then the offender must provide the local law enforcement agency in that jurisdiction with all addresses.⁷ If the offender has no residence, the offender must update his or her registration no less than every 90 days with the local law enforcement agency in which the offender is located at the time of registration.⁸

⁷ Penal Code section 290, subdivision (a)(1)(B), Statutes of 1998, Chapter 929.

⁸ Penal Code section 290, subdivision (a)(1)(C), Statutes of 1997, Chapter 820.

Additionally, if the convicted sex offender is a sexually violent predator, then the offender must verify his or her address and place of employment including the name and address of the employer, no less than once every 90 days in a manner established by the Department of Justice.⁹

Lastly, if a convicted sex offender changes his or her name, the offender then must inform the local law enforcement agency where the offender is registered within 5 working days of the name change.¹⁰

As mentioned above, section 290 of the test claim legislation, subdivisions (g)(1)(2)(7), states that it is a misdemeanor, felony and/or a continuing offense if a convicted sex offender does not register as required under the test claim legislation. In addition, other provisions in section 290 state that it is a crime if a convicted sex offender does not register within a specified time period. Specifically, subdivision (g)(6) provides that:

Except as otherwise provided in paragraph (5), **and in addition to any other penalty imposed under this subdivision**, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. [Emphasis added.]

Subdivision (g)(5), provides that:

Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

Accordingly, by adding additional timelines in which convicted sex offenders must register, section 290 of the test claim legislation defines a new crime. Under prior law, these convicted sex offenders had no duty to register in the proscribed time periods. Now, under section 290 of the test claim legislation, if they do not register or provide notification of a name change, the offender may be guilty of a misdemeanor, felony or continuing offense. Accordingly, the Commission finds that this portion of the test claim legislation creates a new crime.

Conclusion

Based on the foregoing, a convicted sex offender's "Duty to Register for New Crimes and Timelines" does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

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⁹ Penal Code section 290, subdivision (a)(1)(E), Statutes of 1997, Chapter 818.

¹⁰ Penal Code section 290, subdivision (f)(3), Statutes of 1996, Chapter 909.

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PART 2 - REMAINING ISSUES PRESENTED BY THE TEST CLAIM LEGISLATION

Issue 1:

Is the test claim legislation a “program” within the meaning of article XIII B, section 6 of the California Constitution by carrying out either the governmental function of providing services to the public or imposing unique requirements on local law enforcement agencies?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program,” within the meaning of article XIII B, section 6, as a program that carries out the governmental function of providing a service to the public, or laws, which to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹¹ In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.¹²

To determine whether the test claim legislation carries out the governmental function of providing services to the public, it is necessary to define the program in which the test claim legislation operates.

California courts have continually held that police and fire protection are two of the most basic functions of local government and are peculiarly governmental in nature.¹³ In the present case, the test claim legislation concerns police protection, because it relates specifically to the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies.

Accordingly, the Commission finds that test claim legislation is a “program” within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Issue 2:

Is the test claim legislation a “new program or higher level of service” within the meaning of article XIII B, section 6 of the California Constitution?

¹¹ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

¹² *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d at 537.

¹³ *Carmel Valley Fire Protection Dist., supra*, 190 Cal.App.3d 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

To determine if a program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁴

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A breakdown of the required activities imposed on local law enforcement agencies is as follows:

- **Change in Existing Timelines to Register**

Prior law required every convicted sex offender of a specified crime to register in the jurisdiction where the offender resides within 14 days of coming into the applicable jurisdiction and to update the registration within 10 days of the offender's birthday.¹⁵ The test claim legislation shortened these deadlines to within 5 working days of when an offender enters the applicable jurisdiction, and to within 5 working days of the offender's birthday for annual updates.¹⁶

In addition, prior law required that the convicted sex offender register with the local law enforcement agency that the offender was last registered with in writing within 10 days of a change of address. Within three days after receipt of this information, the local law enforcement agency must forward a copy of the change of address or location to the Department of Justice. The Department of Justice shall forward the appropriate registration data to the local law enforcement agency or agencies having jurisdiction over the new place of residence or location.¹⁷ The test claim legislation is the same as prior law, except that the time period in which an offender has to report his or her change of address was changed from 10 days to 5 working days.

The mere shortening in time of registration deadlines does not change the level of service related to the above activities. Accordingly, there is no new program or higher level of service due to a change in the existing registration deadlines.

- **Violent Crime Information Network**

The test claim legislation states that “[t]he registering agency [local law enforcement agency] shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).”¹⁸ There was no activity in prior law requiring local law enforcement agencies to submit registrations to VCIN. Therefore, this activity is a new program or higher level of service.

- **Removal of Registration for Decriminalized Conduct**

The test claim legislation exempts a person from registering as a sex offender under specified conditions if the offender was convicted of sodomy or oral copulation between consenting adults prior to January 1, 1976. The Department of Justice is required to remove these individuals from

¹⁴ *County of Los Angeles, supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist., supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁵ Penal Code section 290, subdivision (a), Statutes of 1984, Chapter 1419.

¹⁶ Penal Code section 290, subdivision (a)(1)(A), Statutes of 1996, Chapter 909.

¹⁷ Penal Code section 290, subdivision (e), Statutes of 1950, Chapter 70.

¹⁸ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

the Sex Offender Registry. Upon notification from the Department of Justice that an offender should be removed from the register, the local law enforcement agency must remove the offender's registration from its files within 30 days from receipt of notification.¹⁹ There was no activity in prior law providing for the decriminalization of this conduct. Therefore, the activity of removing an individual from a local law enforcement agency's file is a new program or higher level of service.

- **Notice of Duty to Register Upon Release, Discharge or Parole**

Prior law provides that any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where the person was confined or is released from a state hospital to which he was committed as a psychopath be informed of the duty to register by the official in charge of the place of confinement before the offender is released. The official in charge must advise the convicted sex offender of the duty to register and must also have the offender read and sign a form that states this duty was explained to the offender. The official in charge of the offender's release must also obtain the address of where the person expects to reside and will report the address to the Department of Justice and to the local law enforcement agency or agencies having jurisdiction over the place that the offender expects to reside. The official in charge must give one copy of the form to the offender, send one copy to the Department of Justice and one copy to the local law enforcement agency or agencies having jurisdiction over the offender.²⁰

The test claim legislation contains the same "Notice of Duty to Register" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision (b)(1) and (2). Nonetheless, since the test claim legislation contains the same notification requirement on local law enforcement agencies as prior law, there is no new program or higher level of service related to this activity.

- **Destruction of Records**

Prior law provided that all records specifically relating to the registration of sex offenders in the custody of the Department of Justice, local law enforcement agencies and other agencies or public officials be destroyed when the offender required to register has his or her records sealed under the procedures set forth in section 781 of the Welfare and Institutions Code.²¹

The test claim legislation contains the same "Destruction of Records" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision(d)(5). However, the requirement to destroy the records has remained the same. Thus, there is no new program or higher level of service related to this activity.

- **Pre-register**

The test claim legislation states that a convicted sex offender required to register under its provisions on or after January 1, 1998, shall also pre-register upon incarceration, placement or

¹⁹ Penal Code section 290, subdivision (a)(2)(F)(i), Statutes of 1997, Chapter 821.

²⁰ Penal Code section 290, subdivision (b), Statutes of 1950, Chapter 70.

²¹ Penal Code section 290, subdivision (d)(6).

commitment or prior to release on probation. The pre-registering official shall be the admitting officer at the place of incarceration, placement or commitment or the probation officer if the person is to be released on probation. The pre-registration shall consist of a pre-registration statement in writing, signed by the person, giving information that shall be required by the Department of Justice, fingerprints and a photograph of the person.²² Prior law contained no provision for the activity of pre-registering. Thus, to the extent that a local law enforcement agency must pre-register convicted sex offenders, this activity is a new program or higher level of service.

- **Contents of Registration Upon Release**

Prior law required that a convicted sex offender register upon release from incarceration, placement or commitment with the local law enforcement agency or agencies in which the offender resides. The registration must contain a statement in writing signed by the offender, giving information as may be required by the Department of Justice, fingerprints, a photograph of the offender and the license plate number of any vehicle owned by or registered in the name of the offender. Within three days of receiving this information, the registering law enforcement agency must forward this information to the Department of Justice.²³

In addition to the above requirements, the test claim legislation imposes some additional requirements on the convicted sex offender as well as local law enforcement agencies. With regard to the signed statement, in addition to the information required by the Department of Justice, the offender must also provide the name and address of his or her employer, and the address of the offender's place of employment if it is different from the employer's main address.²⁴ With regard to vehicle information, the convicted sex offender must also include information related to any vehicle regularly driven by the offender.²⁵ The offender must also be notified by the local law enforcement agency that in addition to the requirements of the test claim legislation, the offender may also have a duty to register in any other state where the offender may relocate.²⁶

Lastly, the test claim legislation requires that the offender provide the local law enforcement agency with adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing the offender's name and address or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the offender shall advise the registering official and sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the offender has no residence, the offender shall be allowed to register. If the offender claims that he

²² Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

²³ Penal Code section 290, Statutes of 1947, Chapter 1124. This provision, absent minor non-substantive changes, has remained the same since section 290 was originally enacted in 1947.

²⁴ Penal Code section 290, subdivision (e)(2)(A), Statutes of 1998, Chapter 930.

²⁵ Penal Code section 290, subdivision (e)(2)(C), Statutes of 1997, Chapter 927.

²⁶ Penal Code section 290, subdivision (e)(2)(D), Statutes of 1997, Chapter 927.

or she has a residence but does not have any proof of residence, the offender shall be allowed to register but shall furnish proof of residence within 30 days of the day the offender is allowed to register.²⁷

Although the above activities are directed at the convicted sex offenders, they also require various activities on local law enforcement agencies to the extent that local law enforcement agencies have to compile this information so that it can be sent to the Department of Justice. Thus, the compiling of this additional data is a new program or higher level of service.

- **Notice of Reduction of Registration Period**

The test claim legislation requires that every convicted sex offender who was required to register before January 1, 1997, shall be notified whenever the offender next re-registers of the reduction in the registration period from 14 days to 5 working days. The notice must be in writing from the local law enforcement agency responsible for registering the individual.²⁸

Prior law required every convicted sex offender registering before January 1, 1985 to be notified of the reduction in the registration period from 30 to 14 days. Since the test claim legislation changes the registration period, a new notification is required.²⁹ Accordingly, the activity of notifying convicted sex offenders of the 14 to 5 day reduction in the timelines to register is a new program or higher level of service.

- **High-Risk Sex Offenders**

The test claim legislation provides that individuals considered to be high-risk offenders can be re-evaluated by the Department of Justice to be removed from the high-risk classification. This process does not involve law enforcement agencies except that the form for evaluation must be available at any sheriff's office. Thus, to the extent that a sheriff's office must maintain this form, there is a new program or higher level of service.³⁰

The test claim legislation also provides that the Department of Justice shall continually search its records and identify, on the basis of those records, high-risk offenders. Four times each year, the Department must provide each chief of police and sheriff in the state and any other designated law enforcement entity upon request information regarding the identity of high-risk sex offenders.

Department of Finance contends that although the Department of Justice must send this information to each chief of police and sheriff in the state, these law enforcement agencies can choose to disregard this information, because the test claim legislation does not impose any duty on them in this regard. This assertion is misplaced. As discussed below, in the "Community Notification" section, subdivision (n) of section 290 requires local law enforcement agencies, under certain circumstances, to disclose information about high-risk sex offenders to the public, which includes statistical information. Thus, to the extent that local law enforcement agencies

²⁷ Penal Code section 290, subdivision (e)(2)(E), Statutes of 1997, Chapter 927.

²⁸ Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

²⁹ Penal Code section 290, subdivision (l), Statutes of 1985, Chapter 1474.

³⁰ Penal Code section 290, subdivision (n)(1)(G)(ii), Statutes of 1996, Chapter 908.

need to compile this statistical data related to high-risk offenders, this activity is a new program or higher level of service.³¹

- **Community Notification**

The test claim legislation permits a local law enforcement agency to disclose information about a convicted sex offender³² or high-risk sex offender³³ under certain circumstances if a peace officer reasonably suspects that a child or other person is at risk. Specifically, the test claim legislation provides:

When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency **may**, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

- (A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.
- (B) Other community members at risk. [Emphasis added.]

This information generally includes information that the agency deems relevant and necessary to protect the public and may include the following:

1. The offender's full name.
2. The offender's known aliases.
3. The offender's gender.
4. The offender's race.
5. The offender's physical description.
6. The offender's photograph.
7. The offender's date of birth.
8. Crimes resulting in registration.
9. The offender's address, which must be verified prior to publication.
10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

³¹ Penal Code section 290, subdivision (n)(2), Statutes of 1996, Chapter 908.

³² Penal Code section 290, subdivision (m), Statutes of 1996, Chapter 908.

³³ Penal Code section 290, subdivision (n), Statutes of 1996, Chapter 908.

11. Type of victim targeted by the offender.
12. Relevant parole or probation conditions, such as one prohibiting contact with children.
13. Dates of crimes resulting in classification under the test claim legislation.
14. The date of release from confinement.³⁴

Although it is a well-settled principle of statutory construction that the word “may” is ordinarily construed as permissive and “shall” is ordinarily construed as mandatory, there are situations in which “may” is interpreted to mean “shall.”³⁵ In *Los Angeles County v. State*,³⁶

the Third District Court of Appeal held:

The word “may” as used in a statute or constitution is often interpreted to mean “shall” or “must.” Such interpretation always depends largely, if not altogether, on the object sought to be accomplished by the law in which the word is used. It seems to be the uniform rule that, where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large – that is, where the public interest or private rights requires that the thing be done then the language, though permissive in form, is peremptory . . .

Since a peace officer is a “public officer,”³⁷ if a peace officer reasonably suspects that a child or another person is at risk from a sex offender or high-risk sex offender, the peace officer must notify certain members of the public that may be in danger from the sex offender. There was no activity in prior law related to community notification of sex offenders. Thus, the community notification activity is a new program or higher level of service.

- **CD ROM**

The test claim legislation states that on or before July 1, 1997, the Department of Justice shall provide a CD-ROM or other electronic medium containing information about certain sex offenders and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to sheriff’s departments in each county, municipal police departments of cities with a population of more than 200,000 and other law enforcement agencies. The local law enforcement agencies “may” obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee and “may” make the CD-ROM or other electronic medium available for viewing by the public.³⁸

³⁴ Penal Code section 290, subdivision (m)(4), Statutes of 1996, Chapter 908.

³⁵ *Common Cause of California v. Board of Supervisors of L.A. County* (1989) 49 Cal.3d 432..

³⁶ *Los Angeles County v. State* (1923) 64 Cal.App.290.

³⁷ Government Code section 195 and Evidence Code section 200.

³⁸ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

Like the Community Notification activity above, the use of the term “may,” though permissive in form, is peremptory. In fact, according to the legislative history, it was the legislative intent that the CD-ROM or other electronic medium shall be made available to the public.³⁹ Assembly Bill 1562 states that:

Knowing the identity of sex registrants empowers parents to protect their children from exposure to persons who might do them harm. Likewise, adult victims would similarly be empowered. It deters sex offenders from re-offending by increasing public awareness of their proclivities, thereby discouraging them from contact with children.⁴⁰

Moreover, the California Department of Justice evaluated patterns of sex offenders and conducted a 15-year follow-up of sex offenders first arrested in 1973. The Department of Justice found:

An analysis of subsequent arrests over the 15-year period (1973-1988) found that nearly one-half (49.4%) were re-arrested for some type of offense and almost 20% (19.7%) for a subsequent sex offense. Sex offenders whose first arrest was for rape by force or threat had the highest recidivism rate, 63.4% for any offense and 25.5% for a subsequent offense. The high recidivist rate could be attributed, in part, to the anonymity of the sex offender.⁴¹

Accordingly, the test claim legislation requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium. Prior law had no provision related to this activity. Thus, this activity is a new program or higher level of service.

- **Records Retention**

The test claim legislation requires local law enforcement agencies to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.⁴² There is no records retention activity under prior law related to CD-ROM or other electronic medium. Accordingly, the records retention activity is a new program or higher level of service.

Conclusion

Based on the foregoing, the following activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution:

³⁹ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, page 2, paragraph 12.

⁴⁰ *Supra*, page 4, paragraph 3.

⁴¹ *Supra*, page 4, paragraph 4.

⁴² Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- Submission of Registered Sex Offender information to the Department of Justice’s Violent Crime Information Network by Local Law Enforcement Agencies (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- Community Notification (§290, subdivision (m))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

However, the analysis must continue to determine if the above activities impose “costs mandated by the state,” under Government Code section 17514.

Issue 3:

Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code section 17514?

Under Government Code section 17514 a new program or higher level of service must impose “costs mandated by the state.” However, under Government Code section 17556, subdivision (c), the Commission **shall not** find “costs mandated by state” if the test claim legislation implemented a federal law.

Government Code section 17556, subdivision (c), provides that there are no “costs mandated by the state” when:

(c) The statute or executive order implemented a federal law or regulation **and** resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [Emphasis added.]

Government Code section 17513 defines “costs mandated by the federal government” as:

. . . any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. “Costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state**, local agency, or school district. [Emphasis added.]

- **Federal Law**

History of the Federal Law

There are three federal enactments that concern the test claim legislation: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan’s Law and the Pam Lychner Sexual Offender Tracking and Identification Act. The collective result of these enactments is codified in 42 U.S.C. 14071-72 (referred to below as “section 14071”)⁴³ and represents the federal law in this matter. These three enactments are as follows:

1. The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,⁴⁴ encourages states to establish an effective sex offender registration system.
2. Megan’s Law,⁴⁵ which amended the provisions of the Wetterling Act, relates to the release of registration information.
3. The Lychner Act,⁴⁶ which makes further amendments to the Wetterling Act, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement agencies.

The federal Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act⁴⁷ and has more recently published guidelines to implement Megan’s Law and clarify other issues concerning Wetterling Act compliance, or section 14071.⁴⁸

Overview of Section 14071

Section 14071 provides a financial incentive for states to establish 10 year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as “sexually violent predators.” States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in funding for HIV testing.⁴⁹

In order to determine if the federal exception applies to the test claim legislation, the Commission must first determine if the test claim legislation implemented section 14071 and resulted in “costs mandated by the federal government.” If so, the Commission must then determine if the test claim legislation exceeds the scope of section 14071.

⁴³ 42 U.S.C.A. section 14072 is not relevant to the test claim as it specifically deals with the FBI database.

⁴⁴ 42 U.S.C.A. section 14071, Public Law 102-322, 108 Stat. 1796, 2038.

⁴⁵ 42 U.S.C.A. section 14071, Public Law 104-145, 110 Stat. 1345, May 17, 1996.

⁴⁶ 42 U.S.C.A. section 14071, Public Law 104-236, 110 Stat. 3096, 3097, October 3, 1996.

⁴⁷ 61 FR 15110 (issued April 4, 1996), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

⁴⁸ 64 FR 572 (issued January 5, 1999) and 64 FR 3590 (issued January 22, 1999), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration.

⁴⁹ 42 U.S.C.A. section 3756, subdivision (f).

- **Findings**

Did the Test Claim Legislation Implement Section 14071?

The legislative history of the test claim legislation shows that it was enacted to implement section 14071. Assembly Bill 1562 specifically states that the passage of the test claim legislation “will launch Megan’s Law in California and fulfill the requirements of the federal law.” “Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.”⁵⁰

In addition, section 14071 specifically provides that states must comply/implement its provisions or lose funding for HIV testing. Section 14071 states that the Attorney General shall establish guidelines for state programs for certain individuals convicted of specified sexual offenses.⁵¹ As mentioned above, the Attorney General issued these guidelines in 1996 and revised and reissued them again in 1999. Section 14071 specifically outlines the provisions that a state registration program must contain⁵² and specifies the dates in which states must comply with section 14071 as well as the consequences if a state fails to comply with its provisions.⁵³

Accordingly, the Commission finds that the test claim legislation implemented section 14071. However, the analysis must continue to determine if the test claim legislation results in “costs mandated by the federal government.”

Does the Test Claim Legislation Result in Costs Mandated by the Federal Government?

“Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet a specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. However, “costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state, local agency or school district.**⁵⁴ [Emphasis added.]

In order to determine if the test claim legislation was “implemented at the option of the state,” California courts, including the California Supreme Court, have held that “[t]he test for determining whether there is a federal mandate is whether compliance with federal standards ‘is a matter of true choice,’ that is, whether participation in the federal program ‘is truly voluntary.’”⁵⁵ The *Hayes* court in following the California Supreme Court’s decisions in *City of Sacramento v. State of California (Sacramento II)*,⁵⁶ held that a “determination of whether

⁵⁰ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁵¹ 42 U.S.C.A., section 1407(a), Public Law 103-322, 108 Stat. 2038.

⁵² 42 U.S.C.A., section 1407(b), Public Law 103-322, 108 Stat. 2038.

⁵³ 42 U.S.C.A., section 1407(f)(1)(2), Public Law 103-322, 108 Stat. 2038.

⁵⁴ Government Code section 17513.

⁵⁵ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁵⁶ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

compliance with a federal law is mandatory or optional must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance or withdrawal.”⁵⁷ Application of these factors in the present case is as follows:

- **Nature and Purpose of the Federal Program** - The federal legislation was enacted to provide the public with information regarding certain convicted sex offenders. The centerpiece of the test claim legislation, the registration and notification provisions related to convicted sex offenders, has its genesis in a New Jersey murder case. On July 29, 1994, Megan Kanka was raped and asphyxiated to death by Jesse Timmendequas, Megan's thirty-three year old neighbor. Unbeknownst to Megan's parents, Timmendequas was a convicted child molester living in a nearby home with two other convicted pedophiles. The brutal murder of this young girl shocked the nation, and catapulted the issue of sexually violent crimes against children onto a national stage.
- **Whether the Federal Statute Suggests an Intent to Coerce** – Although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders. According to the test claim legislation, “[a] state that fails to implement the program as described in this section [the test claim legislation] shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.”⁵⁸ Section 3756 provides:

(a) States

Subject to subsection (f) of this section, of the total amount appropriated for this subchapter in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 3761 of this title shall be set aside for section 3752 of this title and allocated to States as follows:

(1) \$500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.⁵⁹

Subsection (f) provides for the testing of certain sex offenders for human immunodeficiency virus.⁶⁰

⁵⁷ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁵⁸ 42 U.S.C.A. section 1407(a), 108 Stat. 2038.

⁵⁹ 42 U.S.C.A. section 3756(a), 108 Stat. 2138.

⁶⁰ 42 U.S.C.A. section 3756(f), 108 Stat. 2138.

In addition, as discussed above, the legislative history of the test claim legislation shows that if California refused to implement section 14071, it would lose substantial funds for HIV testing. Specifically, Assembly Bill 1562 states that “[f]ailure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.”⁶¹ Clearly, the Legislature believed that such a loss in funding was “substantial,” since it was the basis of compliance with section 14071.

Thus, although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders.

- **When State and/or Local Participation Began** – Section 170101 of the Violent Crime Control and Law Enforcement Act was enacted on September 13, 1994. Congress amended and President Clinton signed the Wetterling Act portion of section 14071 in May of 1996. The test claim legislation was enacted by an “urgency statute” and became effective on September 25, 1996.
- **The Penalties, if any Assessed for Withdrawal or Refusal to Participate or Comply** – There are no penalties if a state fails to comply with the federal legislation. However, as mentioned above, failure to comply will result in a loss of federal funding for HIV testing for certain sex offenders.
- **Any Other Practical or Legal Consequence of Nonparticipation, noncompliance or withdrawal** - Practically speaking, California, like all the other states, had no choice but to comply with the federal legislation or lose substantial funding.

Based on the above factors, the Commission finds that the state had no “true choice” but to comply with the provisions of section 14071. Accordingly, the test claim legislation implemented a federal law and resulted in costs mandated by the federal government.⁶²

However, the federal exception does not apply to the extent that the test claim legislation mandates costs that exceed the mandate in that federal law or regulation.⁶³ Thus, the Commission must compare the test claim legislation to the federal legislation to determine which costs or activities exceed the federal mandate.

Does the Test Claim Legislation Exceed the Federal Mandate?

In order to determine if the test claim legislation exceeds section 14071, the Commission has compared the activities imposed by the test claim legislation to section 14071 below. However, before comparing the test claim legislation and section 14071, it should be noted that section 14071 was not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, section 14071’s standards constitute a

⁶¹ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁶² Government Code section 17556, subdivision (c).

⁶³ *Ibid.*

floor for state programs, not a ceiling. States do not have to go beyond sections 14071’s minimum requirements to maintain eligibility for funding, but they may retain the discretion to do so. State programs often contain elements that are not required under section 14071.⁶⁴

Activities Imposed by the Test Claim Legislation	Federal Mandate Section 14071.
Violent Crime Information Network ⁶⁵	Section 14071 has no requirement that the state establish a Violent Crime Information System. Thus, this activity exceeds the federal mandate. ⁶⁶
Removal of Registration for Decriminalized Conduct ⁶⁷	Section 14071 has no provision related to the activity of removing a registration for decriminalized conduct. Thus, this activity exceeds the federal mandate.
Pre-register ⁶⁸	Section 14071 has no provision related to the activity of pre-registering convicted sex offenders. Thus, this activity exceeds the federal mandate.
Contents of Registration Upon Release ⁶⁹	The only activity in section 14071 related to the registration activities in the test claim legislation is the requirement that local law enforcement agencies advise a convicted sex offender of a possible duty to register in any other state where the offender resides. ⁷⁰ Thus, with the exception of this activity, section 14071 does not have a specific mandate related to the registration activities imposed by the test claim legislation.
Notice of Reduction of Registration Period ⁷¹	Section 14071 has no provision related to the notice activity. Thus, this activity exceeds the federal mandate

⁶⁴ 64 FR 572.

⁶⁵ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

⁶⁶ 42 U.S.C.A. section 14071, subdivision (b)(2)(3)(4), 108 Stat. 2038.

⁶⁷ Penal Code section 290, subdivision (F)(i)(I)(II)(III), Statutes of 1997, Chapter 821.

⁶⁸ Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

⁶⁹ Penal Code section 290, subdivision (e)(2)(A)(B)(C)(D)(E), Statutes of 1997, Chapter 927.

⁷⁰ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁷¹ Penal Code section 290, subdivision (I), Statutes of 1997, Chapter 821.

High-Risk Sex Offenders ⁷²	Section 14071 has no provision related to the activities associated with high-risk sex offenders. Thus, this activity exceeds the federal mandate.
Community Notification ⁷³	Section 14071 provides that any local law enforcement agency “may” release relevant information about a convicted sex offender that is necessary to protect the public concerning a specific person required to register. ⁷⁴ In the context of this section, the use of the term “may,” though permissive in form, is peremptory. Thus, the community notification activity is a federal mandate and not a “cost mandated by the state.”
CD ROM ⁷⁵	Although section 14071 has no provision related to the CD-ROM activity, Department of Finance contends that this activity merely implements federal law, because 42 U.S.C.A 14071, subdivision (e)(2), states that “the State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section.” This contention is incorrect. Section 14071 does not require the relevant information to be released by CD ROM. Thus, this activity exceeds the federal mandate.
Records Retention ⁷⁶	Section 14071 has no provision related to the record retention activity. Thus, this activity exceeds the federal mandate.

In summary, the following activities imposed by the test claim legislation exceed section 14071, the federal mandate, and thus result in “costs mandated by the state:”

⁷² Penal Code section 290, subdivision (n)(1)(G)(ii)(2), Statutes of 1996, Chapter 908.

⁷³ Penal Code section 290, subdivision (m)(n), Statutes of 1996, Chapter 908.

⁷⁴ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁷⁵ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

⁷⁶ Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

- **Violent Crime Information Network**

This activity requires a local law enforcement agency to submit sex offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network

- **Removal of Registration for Decriminalized Conduct**

This activity requires a local law enforcement agency to remove an offender's registration from its files within 30 days of receiving a notification to do so from the Department of Justice.

- **Pre-register**

This activity requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender.

- **Contents of Registration Upon Release**

A convicted sex offender has always had the duty to register upon release with the local law enforcement agency in which the offender will reside. While most of the activities related to this registration falls on the convicted sex offender, the following related activities are imposed on the registering local law enforcement agency:

1. The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address.
2. The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.
3. The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.

- **Notice of Reduction of Registration Period**

This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next re-registers of the reduction in the registration period was from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual.

- **High-Risk Sex Offenders**

The test claim legislation imposes some new activities on specific local law enforcement agencies related to high-risk offenders. These activities are as follows:

1. Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.
2. A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.

- **CD ROM**

This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium.

- **Records Retention**

This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.

Finally, the test claim legislation contains a sunset provision wherein it is only operative until January 1, 2004.

CONCLUSION

The Commission finds that Part 2 of the test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

The Commission further finds that the following required activities, as outlined in more detail above, are a "new program or higher level of service" under article XIII B, section 6 of the California Constitution and result in "costs mandated by the state" within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Lastly, the Commission finds that all other activities in the test claim legislation do not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Accordingly, the Commission approves the test claim, in part, as outlined above.