

**ITEM 10**  
**PROPOSED AMENDMENT TO**  
**PARAMETERS AND GUIDELINES**  
**AND**  
**STATEMENT OF DECISION**

Penal Code Sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3), 13014, 13023, and  
13730(a)

Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993,  
Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571  
(AB 491); and Statutes 2000, Chapter 626 (AB 715)

*Crime Statistics Reports for the Department of Justice*  
*and*

Penal Code Section 13023

Statutes 2004, Chapter 700 (SB 1234)

*Crime Statistics Reports for the Department of Justice Amended*  
12-PGA-01 (02-TC-04 and 02-TC-11 and 07-TC-10)

State Controller's Office, Requestor

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Commission on Peace Officer Standards and Training, “Guidelines and Curriculum for Law Enforcement Response to Domestic Violence.” 1988.



RECEIVED  
October 1, 2012  
Commission on  
State Mandates

Exhibit A

**JOHN CHIANG**  
California State Controller

October 1, 2012

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Proposed Clarification to Parameters and Guidelines  
Crime Statistics Reports for the Department of Justice Program  
02-TC-04 and 02-TC-11  
Related to Statutes of 1993, Chapter 1230, Penal Code Section 13730, Subdivision (a)  
City of Newport Beach and County of Sacramento, Claimants

Dear Ms. Halsey:

We have reviewed the *Crime Statistics Reports for the Department of Justice Program* parameters and guidelines adopted by the Commission on September 30, 2010, as well as documentation provided by cities and counties related to claims filed under this program. We believe the description of reimbursable activities C.1. and C.2. under Section IV., Reimbursable Activities, has resulted in claimants claiming costs that are not reimbursable under the mandated program for the period of July 1, 2001, through June 30, 2011. The parameters and guidelines identify the following reimbursable activities:

- C. Domestic Violence Related Calls for Assistance: (Pen. Code, §13730, subd. (a)); the following activity performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:
1. Support all domestic-violence related calls for assistance with a written incident report.
  2. Review and edit the report.

For the period of July 1, 2001, through June 30, 2011, claimants have filed 2,605 claims totaling \$143 million in costs for these two reimbursable activities. We believe that claimants claimed costs for writing all domestic-violence incident reports, and some claimants also included the ancillary tasks of interviewing the parties, completing of the booking sheet or restraining order, transporting the victim(s) to the hospital, booking the alleged perpetrator, and other related activities. We believe the costs for writing these reports should be claimed under Penal Code section 13730, subdivision (c), (c)(1), (c)(2), and (c)(3), which were pled in three different test claims.

Heather Halsey, Executive Director  
October 1, 2012  
Page 2

We request that the Commission clarify the parameters and guidelines consistent with its statement of decision adopted on June 6, 2008. We request that the Commission expedite its analysis and decision on this proposed parameters and guidelines clarification in order to avert significant numbers of filings of incorrect reduction claims based on proposed State Controller's Office (SCO) desk reviews or field audit adjustments, and to avoid causing the State to pay millions of dollars in costs that are not reimbursable under the mandate.

Based on the Commission analysis in its *Crime Statistics Reports for the Department of Justice Program* statement of decision adopted June 6, 2008, we believe that reimbursable activities identified in C.1. and C.2. should read as follows:

1. Support all domestic violence-related calls for assistance with a written incident report, except for those that result in a written report of domestic violence. Such a circumstance could occur where officers are dispatched to the scene of a domestic violence-related call for assistance, but after investigation, determine that either no crime was committed, or that the crime committed was not a domestic violence incident. In such cases, the reimbursable costs to write the report include the costs to conduct the underlying investigation to the extent necessary to write the report.

However, this reimbursability does not extend to such ancillary tasks as completing the booking sheet or restraining order, transporting the victim(s) to the hospital, booking the alleged perpetrator, and other related activities.

2. Review and edit the report.

We believe that the above clarifying language is supported by the Commission's statements of decision for the reasons discussed below.

- Statutes of 1984, Chapter 1609, added Penal Code section 13730. Subsection (c) states that . . . "In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident." This statutory change was pled in the *Domestic Violence Information Program* (CSM 4222).

The Commission adopted the statement of decision on January 22, 1987. The statement of decision determined that the provisions added by Chapter 1609, Statutes of 1984, imposed a higher level of service. The Commission's parameters and guidelines adopted on February 26, 1987, identified the following reimbursable activities in Penal Code section 13730, subdivision (c), "For the writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident."

Heather Halsey, Executive Director  
October 1, 2012  
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- Statutes of 1995, Chapter 965, added a sentence to the end of Penal Code section 13730, subdivision (c), and added (c)(1) and (c)(2) to state, “A report shall include at least both of the following: (1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance. (2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency has previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.” This statutory change was pled in the *Domestic Violence Training and Incident Report Program* (CSM 96-32-01).

The Commission adopted the statement of decision on February 26, 1998. The statement of decision allows costs identified in Penal Code section 13730, subdivisions (c)(1) and (c)(2). The Commission’s statement of decision concluded that, “Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for all subsequent window periods from July 1 (the start of the new fiscal year) until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.” Subsequent amendment of Government Code section 17581 eliminated the window periods.

- Statutes of 2001, Chapter 483, modified the last sentence of Penal Code section 13730, subdivision (c), and added (c)(3) to state, “A report shall include at least all of the following: (3) A notation on whether the officer or officers who responded to the domestic violence call inquired of the victim, the abuser, or both, whether a firearm or other deadly weapon was present at the location. If a firearm or other deadly weapon is present at the location, a reasonable attempt shall be made to confiscate the firearm or deadly weapon pursuant to Section 12028.5.” This statutory change was pled in the *Crime Victims’ Domestic Violence Incident Report II Program* (CSM 02-TC-18).

The Commission adopted the statement of decision on September 27, 2007. The Commission’s statement of decision concluded that costs identified in Penal Code section 13730, subdivision (c)(3), as amended by Chapter 483, Statutes of 2001 imposes a reimbursable State-mandated program. The Commission’s parameters and guidelines adopted on May 27, 2010, also allow costs identified in Penal Code section 13730, subdivision (c)(3).

- Statutes of 1993, Chapter 1230, added the following sentence to Penal Code section 13730, subdivision (a), “Domestic violence-related calls for assistance shall be supported with a written incident report described in subdivision (c), identifying the domestic violence incident.” The Commission adopted the statement of decision for the *Crime Statistic Reports for the Department of Justice Program* for 02-TC-04 and 02-TC-11 on June 26, 2008; and for 07-TC-10 on July 31, 2009, and corrected it on April 12, 2010. The Commission adopted the parameters and guidelines on September 30, 2010.

Heather Halsey, Executive Director  
October 1, 2012  
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The June 26, 2008 statement of decision clarifies that the costs to prepare the written domestic violence incident reports were pled on the above three mandated programs. It also stated that pre-existing law [Penal Code section 13730, subdivision (c)], “only requires incident reports for ‘incidents of domestic violence’ whereas the 1993 amendment requires written incident reports for ‘calls for assistance.’ Therefore, the Commission finds that the 1993 amendment to section 13730 [which had not been pled previously] is a new program or higher level of service.” Based on the Commission’s decision, reimbursable domestic violence-related calls for assistance under this mandate are for written incident reports that do not result in a written report of domestic violence.

If the Commission adopts the clarifying language above, the SCO will issue revised claiming instructions for the period of July 1, 2001, through June 30, 2011, and will request that claimants file amended reimbursement claims for the same period. The first nine of the ten years of claims were initial reimbursable claims due April 2011. To date, no payments have been made.

If you have any questions, please contact me at (916) 323-5849.

Sincerely,

*Original signed by*

JIM L. SPANO, Chief  
Mandate Cost Audits Bureau  
Division of Audits

JLS/vb

11121



**JOHN CHIANG**  
California State Controller

December 4, 2012

Received  
December 5, 2012  
Commission on  
State Mandates

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Proposed Clarification to Parameters and Guidelines  
Crime Statistics Reports for the Department of Justice Program  
02-TC-04 and 02-TC-11  
Related to Statutes of 1993, Chapter 1230, Penal Code Section 13730, Subdivision (a)  
City of Newport Beach and County of Sacramento, Claimants

Dear Ms. Halsey:

On October 1, 2012, the State Controller's Office requested that the Commission clarify the parameters and guidelines consistent with its adopted statement of decision. We recently noticed that the following edits should be made to the document:

- Page 2:
  - First and second paragraph should reference June 26, 2008, rather than June 6, 2008, statement of decision.
- Page 3:
  - End of first bullet should reference CSM 96-362-01 rather than CSM 96-32-01.
  - Second bullet did not accurately quote Penal Code section 13730, subdivision (c)(3). The paragraph should read:

Statutes of 2001, Chapter 483, modified the last sentence of Penal Code section 13730, subdivision (c), and added (c)(3) to state, "The report shall include at least all of the following: (3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5." This statutory change was pled in the *Crime Victims' Domestic Violence Incident Report II Program* (CSM 02-TC-18).

Heather Halsey, Executive Director  
December 4, 2012  
Page 2

Received  
December 5, 2012  
Commission on  
State Mandates

If you have any questions, please contact me at (916) 323-5849.

Sincerely,

*Original signed by*

JIM L. SPANO, Chief  
Mandate Cost Audits Bureau  
Division of Audits

JLS/vb

11307

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On December 6, 2012, I served the:

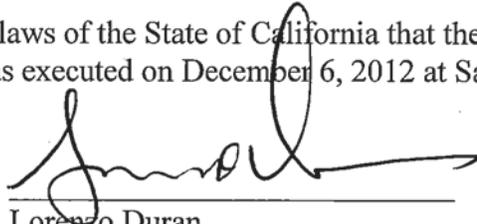
**State Controller's Office Comments**

*Crime Statistics Reports for the Department of Justice, 12-PGA-01 (02-TC-04, 02-TC-11, 07-TC-10)*

Related to Penal Code Section 13730, Subdivision (a); Statutes 1993, Chapter 1230

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 6, 2012 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95823

## Commission on State Mandates

Original List Date: 10/5/2012  
Last Updated: 12/6/2012  
List Print Date: 12/06/2012  
Claim Number: 12-PGA-01  
Issue: Crime Statistic Reports for the Department of Justice

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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

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Received  
January 3, 2013  
Commission on  
State Mandates

**From:** [Heather Halsey](#)  
**To:** [Lorenzo Duran](#)  
**Cc:** [Heidi Palchik](#); [Camille Shelton](#); [Jason Hone](#)  
**Subject:** Fwd: SCO's Request to Amend Crime Statistics Report to DOJ  
**Date:** Thursday, January 03, 2013 7:28:13 AM

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Please add this to today's mail log.

Begin forwarded message:

**From:** Allan Burdick <[Allan\\_Burdick@mgtamer.com](mailto:Allan_Burdick@mgtamer.com)>  
**Date:** January 2, 2013, 6:31:31 PM PST  
**To:** Heather Halsey <[Heather.Halsey@csm.ca.gov](mailto:Heather.Halsey@csm.ca.gov)>, Camille Shelton <[Camille.Shelton@csm.ca.gov](mailto:Camille.Shelton@csm.ca.gov)>  
**Cc:** <[KRios@sco.ca.gov](mailto:KRios@sco.ca.gov)>, <[jspano@sco.ca.gov](mailto:jspano@sco.ca.gov)>, <[jlal@sco.ca.gov](mailto:jlal@sco.ca.gov)>, "Gust, Nancy" <[ngust@sacsheriff.com](mailto:ngust@sacsheriff.com)>, David McGill <[mcgilldw@aol.com](mailto:mcgilldw@aol.com)>, Guy Burdick <[Guy\\_Burdick@mgtamer.com](mailto:Guy_Burdick@mgtamer.com)>  
**Subject: SCO's Request to Amend Crime Statistics Report to DOJ**

Heather and Camille,

After talking to Camille today, I thought just a quick note on the State Controller's request to amend the Crime Statistics Reports to DOJ may be helpful. I was going to wait until the Commission issued its staff analysis to comment if needed, but hopefully I can save you a lot of unnecessary staff time so you can proceed with your backlog of important test claim matters. Below are some excerpts from the SCO's request to amend the parameters and guidelines. I have the CSAC SB 90 Service comments in bold red type to simplify the reading and also highlighted in bolded blue those provisions requested by the State Controller that we deem unnecessary if you should proceed to provide clarification to these parameters and guidelines. I bolded the comments for anyone reading this letter that may not have a color copy.

**Controller's Request to Amend the P's and G's (Copied from the letter to Heather Halsey on October 16, 2012)**

We request that the Commission clarify the parameters and guidelines consistent with its statement of decision adopted on June 6, 2008. We request that the Commission expedite its analysis and decision on this proposed parameters and guidelines clarification in order to avert significant numbers of filings of incorrect reduction claims based on proposed State Controller's Office (SCO) desk reviews or field audit adjustments, and to avoid causing the State to pay millions of dollars in costs that are not reimbursable under the mandate.

**CSAC SB 90 Service Comment:**  
**We do not believe there is a pressing need to clarify the current**

parameters and guidelines as proposed by the State Controller. We have offered a few clarifying comments if the Commission believes it needs to add any clarify amendments. In addition, we also do not think there will be the need for many of our members or other agencies to file IRC's unless the State Controller misinterprets the parameters and guidelines, since we do not believe there is much confusion about these parameters and guidelines. I have reviewed a random sample of both city and county reimbursement claims filed with the State Controller from over 70 agencies and it appears and other than the one city, I do not think that costs for the items cited by the State Controller have been claimed by 99% of the local agencies. One city somehow totally misread the parameters and guidelines

**SCO Request to the Commission (Copied from the letter to Heather Halsey on October 16, 2012)**

Based on the Commission analysis in its *Crime Statistics Reports for the Department of Justice Program* statement of decision adopted June 6, 2008, we believe that reimbursable activities identified in C.1. and C.2. should read as follows:

1. Support all domestic violence-related calls for assistance with a written incident report, **except for those that result in a written report of domestic violence. Such a circumstance could occur where officers are dispatched to the scene of a domestic violence-related call for assistance, but after investigation, determine that either no crime was committed, or that the crime committed was not a domestic violence incident. In such cases, the reimbursable costs to write the report include the costs to conduct the underlying investigation to the extent necessary to write the report.**

However, this reimbursability does not extend to such ancillary tasks as completing the booking sheet or restraining order, **transporting the victim(s) to the hospital, booking the alleged perpetrator**, and other related activities.

**CSAC SB 90 Service Comment:**

**As mentioned above, the language bolded in blue is either not consistent with the statement of decision or unnecessary. If the Commission would like to add clarifying language or a note on excluded activities, the paragraph above with the deletion of the blue bolded language could be added.**

**The following item numbered "2." is the SCO language in its letter to Heather is continued below.**

2. Review and edit the report. We believe that the above clarifying language is supported by the Commission's statements of decision for the

reasons discussed below.

**CSAC SB 90 Service Comment:**

**After reading the following pages included by the Controller in its letter to the Commission, I do not think the Controller is requesting any language change to the Commission's existing language to "Review and Edit the Report". If I am mistaken, I would be pleased to comment on it. If the Commission is going to clarify any language, they could add, change the language to read: "Review, edit, approve and file." Since as pointed out by the staff in its final staff analysis to the parameter and guidelines, to paraphrase, "since these reports could be part of subsequent court documentation," the SB 90 Service believes they need to be approved and filed.**

I know how busy the Commission staff is in clearing up its backlog, but hopefully it will not divert much staff time to this issue. I am copying the SCO staff and if they disagree with my comments, I suggest we have a pre-hearing following the upcoming Commission meeting on Friday afternoon, January 25<sup>th</sup>. I have also copied staff from the two test claimants, Nancy Gust with the Sacramento Sheriff Department and David McGill, from the Newport Beach Police Department. I expect both are not aware of the State Controller's filing, so this will probably be new to them and they may want to comment on the SCO request, so I have attached it.

Happy New Year,

Allan

**Allan Burdick**  
**CSAC SB 90 Service**  
2001 P Street, Suite 200  
Sacramento, CA 95811  
Office: (916) 443-9236 x 4513  
Cell (916) 203-3608

<SCO Crime.pdf>

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On January 4, 2013, I served the:

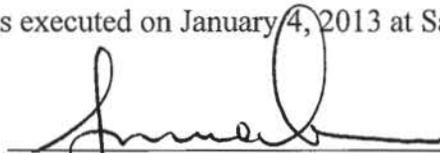
**CSAC SB-90 Comments**

*Crime Statistics Reports for the Department of Justice*, 12-PGA-01 (02-TC-04, 02-TC-11, 07-TC-10)

Related to Penal Code Section 13730, Subdivision (a); Statutes 1993, Chapter 1230

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the 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 4, 2013 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 9<sup>th</sup> Street, Suite 300  
Sacramento, CA 95823

## Commission on State Mandates

Original List Date: 10/5/2012  
Last Updated: 12/6/2012  
List Print Date: 12/06/2012  
Claim Number: 12-PGA-01  
Issue: Crime Statistic Reports for the Department of Justice

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

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

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## COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
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October 11, 2013

Mr. Jim Spano  
Mandate Cost Audits Bureau, Division of Audits  
3301 C Street, Suite 700  
Sacramento, CA 95816

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

**Re: Draft Proposed Amendment to Parameters and Guidelines and Statement of Decision, Schedule for Comments, and Notice of Hearing**  
*Crime Statistics Reports for the Department of Justice, 12-PGA-01 (02-TC-04 and 02-TC-11 and 07-TC-10)*  
Related to Penal Code Section 13730(a); Statutes 1993, Chapter 1230  
California State Controller, Requestor

Dear Mr. Spano:

The draft proposed amendment to parameters and guidelines and statement of decision for the above-named matter are enclosed for your review and comment.

#### **Written Comments**

Written comments may be filed on the draft staff analysis by **October 21, 2013**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

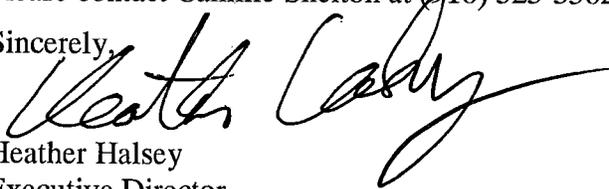
If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

#### **Hearing**

This matter is set for hearing on **Friday, December 6, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about November 22, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Camille Shelton at (916) 323-3562 if you have any questions.

Sincerely,

  
Heather Halsey  
Executive Director

**ITEM \_\_\_\_**  
**DRAFT PROPOSED AMENDMENT TO**  
**PARAMETERS AND GUIDELINES**  
**AND**  
**STATEMENT OF DECISION**

Penal Code Sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3), 13014, 13023, and  
13730(a)

Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993,  
Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571  
(AB 491); and Statutes 2000, Chapter 626 (AB 715)

*Crime Statistics Reports for the Department of Justice*  
*and*

Penal Code Section 13023

Statutes 2004, Chapter 700 (SB 1234)

*Crime Statistics Reports for the Department of Justice Amended*

12-PGA-01 (02-TC-04 and 02-TC-11 and 07-TC-10)

State Controller's Office, Requestor

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**EXECUTIVE SUMMARY**

Attached is the draft proposed statement of decision for this matter. This draft proposed statement of decision also functions as the draft staff analysis, as required by section 1183.07 of the Commission's regulations.

**I. Background**

On October 1, 2012, the State Controller's Office (SCO) filed a request to amend the parameters and guidelines for *Crime Statistics Reports for the Department of Justice* to clarify the scope of the activity mandated by Penal Code section 13730(a), as amended by Statutes 1993, chapter 1230. The 1993 amendment to the statute added the underlined language in subdivision (a) as follows:

- (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

- (b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.
- (c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

On June 26, 2008, the Commission approved the test claim with respect to the 1993 amendments to Penal Code section 13730(a), authorizing reimbursement for the following activity: “For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report.”

On September 30, 2010, the Commission adopted parameters and guidelines, authorizing reimbursement for the activity, beginning July 1, 2001, as follows:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.

In its request to amend the parameters and guidelines, the SCO contends that for the period of July 1, 2001, through June 30, 2011, claimants have filed 2,605 claims totaling \$143 million in costs for the activities listed above, and have inappropriately claimed costs for writing *all* domestic violence incident reports in their claims for reimbursement. The SCO argues that some of the costs are not reimbursable under Penal Code section 13730(a), but should instead be included in other state-mandated programs that reimburse local government for costs incurred under Penal Code section 13730(c). The Commission authorized reimbursement for Penal Code section 13730(c), as amended by different statutes, in *Domestic Violence Information* (CSM 4222), *Domestic Violence Training and Incident Reporting* (CSM 96-362-01), and *Crime Victims’ Domestic Violence Incident Reports II* (CSM 02-TC-18), all of which have been suspended by the Legislature. The SCO believes that subdivision (c) of the statute should be interpreted as requiring the written incident report in all cases when it is determined that a domestic violence *crime* is committed, and that subdivision (a) should be interpreted as requiring the incident report in “all other cases” when it is determined that no crime was committed or that the crime committed was not a domestic violence incident. The SCO also contends that some claimants have inappropriately claimed costs under subdivision (a) for interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other ancillary activities. The SCO proposes that the parameters and guidelines be amended by adding the following underlined language:

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report, except for those that result in a written report of domestic violence. Such a circumstance could occur where officers are dispatched to the scene of a domestic violence-related call for assistance, but after investigation, determine that either no crime was committed, or that the crime committed was not a domestic violence incident. In such cases, the reimbursable costs to write the report include the costs to conduct the underlying investigation to the extent necessary to write the report.

However, this reimbursability does not extend to such ancillary tasks as completing the booking sheet or restraining order, transporting the victim(s) to the hospital, booking the alleged perpetrator, and other related activities.

2. Review and edit the report.

## II. Procedural History

On October 1, 2012, the SCO filed a request to amend the parameters and guidelines for the *Crime Statistics Reports for the Department of Justice* program. On January 2, 2013, interested person, Mr. Allan Burdick, commented on the SCO's request to amend the parameters and guidelines, asserting that the amendment is unnecessary. No other comments have been filed.

## III. Analysis

The SCO raises two issues in its request. The first issue deals with the interpretation of Penal Code section 13730(a) and (c), and the Commission's decisions on those subdivisions. The second issue seeks clarification whether claimants are eligible for reimbursement for "interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities."

- A. The SCO's interpretation, that Penal Code section 13730(a) should be limited to situations where no crime is committed, or that the crime committed is not a domestic violence incident, is not supported by the law or the Commission's decisions and, thus, staff recommends that the Commission deny the request to amend the parameters and guidelines in this respect.**

The Commission approved reimbursement "for local law enforcement agencies to support *all* domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230)," and this language was placed in the parameters and guidelines for the program with little discussion, except to add reasonably necessary activities to review and edit the report.

The SCO contends that reimbursement to support "all domestic-violence related calls for assistance with a written incident report" pursuant to Penal Code section 13730(a) should be limited to situations where a crime has not been committed, or the crime committed is not one of domestic violence. On the other hand, costs incurred to prepare a domestic violence incident report in cases where a domestic violence crime has been committed are covered by other state-mandated programs approving reimbursement for Penal Code section 13730(c), which have been suspended by the Legislature. In other words, SCO is suggesting that the language in subdivision (a) requiring a written incident reports for "*all* calls for assistance," when compared to the existing language in subdivision (c) requiring a report for all "incidents" of domestic

violence, imposes a limited, higher level of service on local agencies for writing only those reports on calls where no domestic violence crime is found.

Staff disagrees with SCO's interpretation for the following reasons:

- SCO's interpretation conflicts with the statements of decision on the test claim and parameters and guidelines, and ignores the Legislature's suspension of the existing requirement in subdivision (c), making that requirement voluntary. At the time Penal Code section 13730(a) was enacted and became effective in 1993, subdivision (c) required that "in all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident." The Commission determined that the requirement in subdivision (c) constituted a state-mandated activity in an earlier test claim, *Domestic Violence Information* (CSM 4222). Following that determination, the Legislature suspended the mandate in subdivision (c) pursuant to Government Code section 17581. Pursuant to Government Code section 17581(a), "[n]o local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if [the mandated program is suspended.]" Section 17581(c) then provides that if a local agency elects to implement or give effect to a statute or executive order that is suspended, the local agency may assess fees to persons or entities which benefit from the statute or executive order. According to the California Supreme Court, once a statute or regulation previously determined to require reimbursement has been properly suspended by the Legislature, there is *no duty to comply* with the requirement in statute or regulation during the fiscal years of the suspension.<sup>1</sup>

Thus, at the time the 1993 test claim statute was enacted, and by operation of Government Code section 17581 with respect to the mandated activity in Penal Code section 13730(c), there was no duty in law to write a domestic violence incident report for incidents of domestic violence. Thus, with the suspension making the activity in subdivision (c) voluntary, there was no prior requirement to write a report. The 1993 legislation adding the language in subdivision (a), therefore, imposed a new program or higher level of service, mandating the activity of supporting *all* domestic violence related calls for assistance with a written incident report.<sup>2</sup> This finding is reflected on page 17 of the statement of decision on the test claim as follows: "Preexisting law, before the 1993 amendment, had been suspended (pursuant to Gov. Code, § 17581) and made voluntary every year beginning fiscal year 1992-1993 as indicated above, making the amendment a newly required activity." The analysis adopted with the parameters and guidelines approve reimbursement, without limitation, to "support *all* domestic-violence related calls for assistance with a written incident report" due to the suspension of the existing

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<sup>1</sup> *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 309.

<sup>2</sup> This finding is consistent with the court's findings in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835, which looked at the law in existence at the time the test claim statute is enacted to determine if there is a new program or higher level of service.

requirement. The Commission’s decisions on the test claim and parameters and guidelines were not challenged, and remain final binding decisions.<sup>3</sup>

- Other Commission decisions addressing Penal Code section 13730 do not support SCO’s interpretation that section 13730(a) is limited to situations where a crime has not been committed, or the crime committed is not one of domestic violence, and that section 13730(c) requires a report only when a domestic violence crime has occurred. (*Domestic Violence Information* (CSM 4222); *Crime Victims Domestic Violence Incident Reports* (99-TC-08), and *Domestic Violence Incident Reports II* (02-TC-18).)
- The preexisting requirement in Penal Code section 13730(c), as added in 1984, that “in all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident,” was interpreted by the Commission (in *Domestic Violence Information* (CSM 4222)) and by the Commission on Peace Officer Standards and Training (POST) to require a report in all cases when an officer responds to a domestic violence call, and not only in situations where law enforcement determines that a domestic violence crime has been committed as asserted by the SCO.

Accordingly, staff recommends that the Commission deny SCO’s request in this respect.

However, since two other Commission decisions directly affect the reimbursement for Penal Code section 13730, staff recommends the following clarifying language be added to the parameters and guidelines, consistent with these decisions:

In addition, reimbursement is *not* required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

**B. Staff recommends that the Commission approve SCO’s request to amend the parameters and guidelines to clarify that reimbursement is *not* required for “interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator.”**

The SCO states that local agencies are inappropriately claiming reimbursement for interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities to enforce a crime and assist the victim.

These activities are not eligible for reimbursement because they go beyond the scope of the mandate to write the incident report pursuant to 13730(a). Investigation, arrests, and treatment of victim are not required by the plain language of the test claim statute and were not found to be

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<sup>3</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

reimbursable in the Commission's decisions on the test claim and parameters and guidelines. In addition, local law enforcement agencies have a preexisting duty to investigate crime.<sup>4</sup>

Moreover, how officers perform duties relating to investigations and arrests are governed by local policy. Penal Code section 13701 specifically requires each agency to develop and adopt written policies and standards for officers' responses to domestic violence calls. The policies have to cover arrests, assistance to victims, cite and release policies, et cetera.

Thus, staff recommends that the Commission approve SCO's request to amend the parameters and guidelines to clarify that reimbursement is not required to complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

### **C. The proposed clarifying amendments would be effective for the entire period of reimbursement.**

Because the additional language proposed simply clarifies the mandated activities and does not make a substantive change to the program, the clarification may be applied by the SCO in its review of reimbursement claims filed before the SCO filed its request to amend these parameters and guidelines. Under the rules of statutory construction, a clarification of existing law may be applied to transactions predating its enactment without being considered a retroactive application of the law. The clarification is merely a statement of what the law has always been.<sup>5</sup>

## **IV. Conclusion and Staff Recommendation**

Staff recommends that the Commission:

- Amend the parameters and guidelines to add the following underlined text to the reimbursable activities:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a)): the following activity performed by a city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report

Reimbursement is **not** required to complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

In addition, reimbursement is **not** required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the

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<sup>4</sup> Government Code section 26602; *People v. Bloom* (1969) 270 Cal.App.2d 731, 734.

<sup>5</sup> *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243; *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, 603.

Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

In addition, non-substantive amendments to the boilerplate are made to conform to the Government Code.

- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
AMENDMENT FOR:

Penal Code Sections 12025(h)(1) and (h)(3),  
12031(m)(1) and (m)(3), 13014, 13023, and  
13730(a)

Statutes 1989, Chapter 1172 (SB 202); Statutes  
1992, Chapter 1338 (SB 1184); Statutes 1993,  
Chapter 1230 (AB 2250); Statutes 1998, Chapter  
933 (AB 1999); Statutes 1999, Chapter 571 (AB  
491); Statutes 2000, Chapter 626 (AB 715);  
Statutes 2004, Chapter 700 (SB 1234)

Requested by the State Controller's Office  
October 1, 2012.

Case No.: 12-PGA-01 (02-TC-04 and  
02-TC-11 and 07-TC-10)

*Crime Statistics Reports for the Department  
of Justice; Crime Statistics Reports for the  
Department of Justice Amended*

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

*(Adopted December 6, 2013)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted the attached proposed statement of decision and amendment to parameters and guidelines during a regularly scheduled hearing on December 6, 2013. [Witness list will be included in the final statement of decision.]

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

The Commission adopted/rejected the amendment to parameters and guidelines and statement of decision by a vote of [vote count will be included in the final statement of decision].

**I. Background**

On October 1, 2012, the State Controller's Office (SCO) filed a request to amend the parameters and guidelines for *Crime Statistics Reports for the Department of Justice* to clarify the scope of the activity mandated by Penal Code section 13730(a), as amended by Statutes 1993, chapter 1230.<sup>6</sup> The 1993 amendment to the statute added the underlined language in subdivision (a) as follows:

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<sup>6</sup> Government Code section 17557(d)(2)(D) allows a local agency, school district, or the state to file a request to amend the parameters and guidelines to clarify what constitutes reimbursable activities.

- (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.
- (b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.
- (c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

On June 26, 2008, the Commission approved the test claim with respect to the 1993 amendments to Penal Code section 13730(a), authorizing reimbursement for the following activity: “For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report.” The Commission explained its finding on this statute as follows:

Statutes 1993, chapter 1230 added the following to subdivision (a) of section 13730: “All domestic violence related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident.”

In its comments on the test claim, Finance states:

Chapter 483, Statutes of 2001 [amending Pen. Code, § 13730] would add an additional requirement to the existing mandate. However, since the mandate is suspended, implementation would be at the option of local government. This interpretation is consistent with a decision adopted by the Commission ... on January 29, 1998, [*Domestic violence Training and Incident Reporting*, CSM 96-362-01] regarding earlier changes to the same code section. Therefore it does not seem appropriate to include references to these chapters as a part of this claim.

The Commission disagrees. In order to be suspended by the Legislature, a statute must have “been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies...” (Gov. Code, § 17581.)

This 1993 amendment to section 13730 has never been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring local agency reimbursement, as required by Government Code section 17581. Therefore, the 1993 amendment is not eligible for suspension by the Legislature.

Thus, based on the mandatory language in the statute, the Commission finds that section 13730, as amended by Statutes 1993, chapter 1230, imposes a state mandate on local law enforcement agencies to support domestic violence related calls for assistance with a written incident report. The Commission also finds that this section, as amended by Statutes 1993, chapter 1230, constitutes a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public<sup>7</sup> by requiring written reports for domestic violence-related calls for assistance, and because making the reports is an activity that is unique to local government.

The next issue is whether the mandate is a new program or higher level of service. Preexisting law, before the 1993 amendment, had been suspended (pursuant to Gov. Code, § 17581) and made voluntary every year beginning fiscal year 1992-1993 as indicated above, making the amendment a newly required activity.

Moreover, preexisting law states:

Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident (Pen. Code, § 13730, subd. (c)).

Preexisting law only requires incident reports for “incidents of domestic violence” whereas the 1993 amendment requires written incident reports for “calls for assistance.” Therefore, the Commission finds that the 1993 amendment to section 13730 is a new program or higher level of service.

The Commission also finds that there are costs mandated by the state, as defined by Government Code section 17514, for this mandate, and that no exceptions to reimbursement in Government Code section 17556 apply.<sup>8</sup>

On September 30, 2010, the Commission adopted parameters and guidelines, authorizing reimbursement for the activity, beginning July 1, 2001, as follows:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.<sup>9</sup>

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<sup>7</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>8</sup> Statement of Decision adopted June 26, 2008 on *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11), pages 17-18.

## II. Request to Amend Parameters and Guidelines

In its request to amend the parameters and guidelines, the SCO contends that for the period of July 1, 2001, through June 30, 2011, claimants have filed 2,605 claims totaling \$143 million in costs for the activities listed above, and have inappropriately claimed costs for writing *all* domestic violence incident reports in their claims for reimbursement. The SCO argues that some of the costs are not reimbursable under Penal Code section 13730(a), but should instead be included in other state-mandated programs that reimburse local government for costs incurred under Penal Code section 13730(c). The Commission authorized reimbursement for Penal Code section 13730(c), as amended by different statutes, in *Domestic Violence Information* (CSM 4222), *Domestic Violence Training and Incident Reporting* (CSM 96-362-01), and *Crime Victims' Domestic Violence Incident Reports II* (CSM 02-TC-18), all of which have been suspended by the Legislature. The SCO believes that subdivision (c) of the statute should be interpreted as requiring the written incident report in all cases when it is determined that a domestic violence *crime* is committed, and that subdivision (a) should be interpreted as requiring the incident report in "all other cases" when it is determined that no crime was committed or that the crime committed was not a domestic violence incident. The SCO also contends that some claimants have inappropriately claimed costs under subdivision (a) for interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other ancillary activities. The SCO proposes that the parameters and guidelines be amended by adding the following underlined language:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report, except for those that result in a written report of domestic violence. Such a circumstance could occur where officers are dispatched to the scene of a domestic violence-related call for assistance, but after investigation, determine that either no crime was committed, or that the crime committed was not a domestic violence incident. In such cases, the reimbursable costs to write the report include the costs to conduct the underlying investigation to the extent necessary to write the report.  
However, this reimbursability does not extend to such ancillary tasks as completing the booking sheet or restraining order, transporting the victim(s) to the hospital, booking the alleged perpetrator, and other related activities.
2. Review and edit the report.

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<sup>9</sup> The parameters and guidelines for *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11) were consolidated with *Crime Statistics Reports for the Department of Justice Amended* (07-TC-10), a separate claim addressing Penal Code section 13023 as amended in 2004.

### **III. Positions of the Parties**

#### State Controller's Office

The SCO requests that the Commission amend the parameters and guidelines as explained in the Background.

#### Interested Persons

On January 2, 2013, Allan Burdick commented on the SCO request to amend the parameters and guidelines, asserting that the amendment is unnecessary. He states:

I have reviewed a random sample of both city and county reimbursement claims filed with the State Controller from over 70 agencies and it appears and other than the one city, I do not think that costs for the items cited by the State Controller have been claimed by 99% of the local agencies.

Mr. Burdick also suggests changing the activity from “review and edit the report” to “review, edit, approve and file the report.”

### **IV. Commission Findings**

The SCO raises two issues in its request. The first issue deals with the interpretation of Penal Code section 13730(a) and (c), and the Commission's decisions on those subdivisions. The second issue seeks clarification whether claimants are eligible for reimbursement for “interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities.” These issues are analyzed separately below.

**A. The SCO's interpretation, that Penal Code section 13730(a) should be limited to situations where no crime is committed, or that the crime committed is not a domestic violence incident, is not supported by the law or the Commission's decisions and, thus, the request to amend the parameters and guidelines in this respect is denied.**

1. The SCO's interpretation ignores the Commission's decision and the effect of the suspension of the activity required by existing law.

As indicated above, Penal Code section 13730(a) was amended in 1993 as follows:

- (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.
- (b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

- (c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

The Commission approved reimbursement “for local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230),” and this language was placed in the parameters and guidelines for the program with little discussion, except to add reasonably necessary activities to review and edit the report.

The SCO contends that the reimbursement claims filed under this mandate have inappropriately requested reimbursement for all domestic violence incident reports. The SCO argues that reimbursement to support all domestic-violence related calls for assistance with a written incident report pursuant to Penal Code section 13730(a) should be limited to situations where a crime has not been committed, or the crime committed is not one of domestic violence. On the other hand, costs incurred to prepare a domestic violence incident report in cases where a domestic violence crime has been committed are covered by other state-mandated programs approving reimbursement for Penal Code section 13730(c), which have been suspended by the Legislature.

The limitations suggested by the SCO are not expressly provided in Penal Code section 13730, the statement of decision on the test claim, or the parameters and guidelines for this program. The plain language of Penal Code section 13730(a) and of the Commission’s decision is to support “*all* domestic-violence related calls for assistance” with a written incident report as described in subdivision (c), identifying the domestic violence incident.

Nevertheless, the SCO bases its argument on the following sentence on page 18 of the test claim statement of decision for this item:

Preexisting law only requires incident reports for “incidents of domestic violence” whereas the 1993 amendment requires written incident reports for “calls for assistance.” Therefore, the Commission finds that the 1993 amendment to section 13730 is a new program or higher level of service.

This sentence was not explained in the decision and there was no discussion that it required a report only when a domestic violence crime was not committed. However, using this sentence, the SCO asserts that the language in subdivision (a) requiring a written incident reports for “*all* calls for assistance,” when compared to the existing language in subdivision (c) requiring a report for all “incidents” of domestic violence, imposes a limited, higher level of service on local agencies for writing only those reports on calls where no domestic violence crime is found. It is correct that the Legislature enacted the 1993 statute with the intent of clarifying the law. The 1993 amendment was based on a proposal by the Attorney General’s Office, Division of Law Enforcement, for legislation to clarify whether calls for assistance in section 13730 should include all calls which are dispatched as domestic violence calls, or only those calls which result in documented and verified cases of domestic violence. The Legislature agreed to amend

subdivision (a) to require a written incident report, “as described in subdivision (c),” for “all domestic violence-related calls for assistance.”<sup>10</sup>

However, the problem with the SCO’s interpretation and reliance on this one sentence is that it does not consider the legal effect of the Legislature’s suspension of the existing requirement in subdivision (c), or the Commission’s findings on that issue. On page 17 of the statement of decision on the test claim, the Commission found that:

Preexisting law, before the 1993 amendment, had been suspended (pursuant to Gov. Code, § 17581) and made voluntary every year beginning fiscal year 1992-1993 as indicated above, making the amendment a newly required activity.

The “preexisting law” referred to in this sentence was the language in Penal Code section 13730(c), which provides that “in all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.” This requirement was suspended by the Legislature, following the Commission’s decision in *Domestic Violence Information* (CSM 4222), approving subdivision (c) as a reimbursable state-mandated activity, and remained suspended at the time the 1993 test claim statute became operative and effective. Pursuant to Government Code section 17581(a), “[n]o local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if [the mandated program is suspended.]” Section 17581(c) then states,

Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.

According to the California Supreme Court, once a statute or regulation previously determined to require reimbursement has been properly suspended by the Legislature, there is no duty to comply with the requirement in statute or regulation during the fiscal years of the suspension.

It seems clear that by operation of Government Code section 17581 and the budget items we have noted, the district are not subject to a duty to comply with the regulations at issue in the present case, so that no violation of those regulations could be posited as the basis for civil or criminal liability.<sup>11</sup>

Thus, at the time the 1993 test claim statute was enacted, by operation of Government Code section 17581, there was no duty in law to write a domestic violence incident report for incidents of domestic violence. The 1993 statute, which added the language in subdivision (a), therefore, imposed a new program or higher level of service, mandating

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<sup>10</sup> 1993 Legislative Bill Proposal, Attorney General’s Office, dated April 16, 1993; Senate Floor Analysis, Third Reading of Assembly Bill 2250, dated April 17, 1993 (1993-1994 Leg. Sess.).

<sup>11</sup> *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 309.

the activity of supporting *all* domestic violence related calls for assistance with a written incident report.<sup>12</sup>

This interpretation of the activity requiring reimbursement to support all domestic violence related calls for assistance with an incident report is consistent with the Commission’s findings and summary of the mandate when it adopted the parameters and guidelines on the program. The analysis adopted by the Commission does not refer to the incident report in subdivision (a) as a higher level of service, requiring reimbursement only for limited situations where it is determined that a domestic violence crime is not committed, but instead acknowledges the suspension of the prior requirement in subdivision (c), and states the following:

As indicated in the Statement of Decision in the present case for 02-TC-04 and 02-TC-11, the Commission had issued prior decisions on the 1984, 1995, and 2001 amendments to Penal Code section 13730, subdivision (c), and adopted parameters and guidelines, which authorized reimbursement for the costs associated with the development of a domestic violence incident report form, writing the domestic violence reports, and compiling and submitting monthly summary reports to the Attorney General.<sup>13</sup> The 1995 and 2001 amendments required additional information to be included in the incident reports; i.e., notations of whether the officer observed signs that the alleged abuser was under the influence of alcohol or controlled substances, whether law enforcement had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim, and whether a firearm or other deadly weapon was present at the scene.<sup>14</sup> *The 1984, 1995, and 2001 mandates have been continuously suspended by the Legislature and made voluntary in each fiscal year of the suspension pursuant to Government Code section 17581.*

*The 1993 amendment to Penal Code section 13730, subdivision (a), that requires local law enforcement agencies to “support all domestic-violence related calls for assistance with a written incident report” was not pled in these earlier test claims and, thus, had never been suspended by the Legislature. Thus, the Commission determined that the activity constituted a mandated new program or higher level of service.*<sup>15</sup> (Emphasis added.)

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<sup>12</sup> This finding is consistent with the court’s findings in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835, which looked at the law in existence at the time the test claim statute is enacted to determine if there is a new program or higher level of service.

<sup>13</sup> *Domestic Violence Information* (CSM 4222), *Domestic Violence Training and Incident Reporting* (CSM 96-362-01), and *Crime Victims’ Domestic Violence Incident Reports II* (CSM 02-TC-18).

<sup>14</sup> See current Penal Code section 13730(c)(1)-(3).

<sup>15</sup> Item 9, September 30, 2010, Commission hearing, Final Staff Analysis on Proposed Parameters and Guidelines for *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11, 07-TC-10), page 16.

The parameters and guidelines adopted by the Commission authorize reimbursement “for local law enforcement agencies to support *all* domestic-violence related calls for assistance with a written incident report.”

Thus, the SCO’s interpretation of the mandate as only a limited, higher level of service conflicts with the Commission’s decision in this case. The Commission’s decisions on the test claim and parameters and guidelines were not challenged, and remain final binding decisions.<sup>16</sup>

2. Prior Commission decisions involving Penal Code section 13730 do not support the SCO’s interpretation of the statute.

The test claim in *Domestic Violence Information* (CSM 4222), was filed on Statutes 1984, chapter 1609, which originally added section 13730 to the Penal Code. Subdivision (c) required law enforcement agencies to develop an incident report form and required that a report shall be written for “all incidents of domestic violence.” The parameters and guidelines adopted by the Commission in 1987 on *Domestic Violence Information* (CSM 4222) authorized reimbursement for subdivision (c), and did not limit the report to situations where a crime occurred, as suggested by the SCO’s interpretation. The reimbursable activity was defined in the parameters and guidelines as follows: “For the writing of mandated reports which shall include domestic violence incident reports, incidents or crime reports directly related to the domestic violence incident.”<sup>17</sup>

The test claim in *Crime Victims Domestic Violence Incident Reports* (99-TC-08), adopted in September 2003, addressed Family Code section 6228, as amended in 1999, which required local agencies to “provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic

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<sup>16</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

<sup>17</sup> See also 1988 Domestic Violence Guidelines developed by the Commission on Peace Officer Standards and Training (POST), which interpreted section 13730(c), as added in 1984, as requiring a report even when the officer cannot determine if a crime has been committed. On page 7 of the guidelines, under the heading “Arrest Criteria and Enforcement Procedures” the guidelines state that:

In the event the suspect has left the scene of the incident, an investigation should be made to determine if a crime has been committed. Penal Code 13730(c) and 13701(i) require that a retrievable report shall be made and complainant shall be advised of the follow-up criminal procedure and case number of the report.

This guideline does not require a report only when a crime has been committed. The guideline states that an investigation “should be made” to determine if a crime has been committed, and that section 13730(c) requires a retrievable report to be made.

Pages 8 and 9 of the guidelines also state that where the alleged victim claims to have a restraining order or stay away order, but does not have possession of the order, the officer may not be able to confirm the validity of the order and cannot make an arrest. In those cases, the guidelines clearly state that “Penal Code section 13730(c) requires that an officer shall write a report, give the victim the police report number and direct the victim to contact the appropriate department unit for follow-up information.”

violence, upon request.” The claimant argued that Family Code section 6228 required local agencies to also “prepare” the domestic violence incident report. The Commission disagreed with this request. The Commission found that the Family Code did not require the preparation of the report; Penal Code section 13730(a), as amended in 1993, required the preparation of the report. The Commission noted that a test claim had not been filed on Penal Code section 13730(a) and that subdivision (a) was not suspended by the Legislature. The Commission determined that Penal Code section 13730(a) was an existing requirement when Family Code section 6228 was amended, and thus, preparation of the report was not new. The relevant findings are as follows:

Moreover, preparing a domestic violence incident report does not constitute a new program or higher level of service because preparation of the report is required under prior law. Penal Code section 13730, *as amended in 1993* (Stats. 1993, ch. 1230), added the requirement that “[a]ll domestic violence-related calls for assistance *shall be supported with a written incident report*, as described in subdivision (c), identifying the domestic violence incident.” (Emphasis added.) The claimant did not include the 1993 amendment to Penal Code section 13730 in this test claim. In addition, the 1993 amendment to Penal Code section 13730 has not been included in the Legislature’s suspension of Penal Code section 13730, as originally added in 1984, since neither the Legislature, the Commission, nor the courts, have made the determination that the 1993 statute constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.<sup>18</sup> Thus, the activity of preparing the domestic violence incident report is an activity currently required by prior law through the 1993 amendment to Penal Code section 13730.<sup>19</sup>

And, finally, *Domestic Violence Incident Reports II* (02-TC-18), adopted in September 2007, addressed 2001 amendments to Penal Code section 13730(c), adding paragraph (3) to the subdivision to require that the incident report include “a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon.” Subdivision (c)(3) states the following:

- (c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of

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<sup>18</sup> Government Code section 17581, subdivision (a)(1), requires that the statute or executive order proposed for suspension must first be “determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.”

<sup>19</sup> Corrected Statement of Decision, *Crime Victims Domestic Violence Incident Reports* (99-TC-08), page 11.

the report as a domestic violence incident. The report shall include at least all of the following:

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(3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Division 4 (commencing with Section 18250) of Title 2 of Part 6.

Although the Commission acknowledged that the requirement in subdivision (c) to prepare a written domestic violence incident report had been suspended by the Legislature, the requirement in subdivision (a), to support all domestic violence related calls for assistance with a written incident report as described in subdivision (c), had not been suspended, and was required by the state. Thus, including the new firearm and weapon information on the report was not included in the suspension, but was mandated by the state as a new program or higher level of service and eligible for reimbursement. The relevant findings are on pages 14-16 of that decision as follows:

The requirement in subdivision (c) of section 13730 to prepare a written domestic violence incident report has been suspended each year,<sup>20</sup> except for fiscal year 2003-2004,<sup>21</sup> since fiscal year 1992-1993. The Legislature specifically identified Statutes 1984, chapter 1609 in the Budget Act and assigned a zero dollar appropriation to it. By suspending Statutes 1984, chapter 1609, the Legislature made preparing the written domestic violence incident report form an optional activity for local government.

Statutes 1993, chapter 1230 added the following to subdivision (a) of section 13730: "All domestic violence related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident." This 1993 amendment has never been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring local agency reimbursement, as required by Government Code section 17581. In sum, the 1993 amendment is not eligible for suspension.

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<sup>20</sup> 2006-2007 Budget Act (Stats. 2006, chs. 46 & 47) Item 8885-295-0001, Schedule (3) (aa); 2005-2006 Budget Act (Stats. 2005, chs. 38 & 39) Item 8885-295-0001, Schedule (3) (hh); 2004-2005 Budget Act (Stats. 2004, ch. 208) Item 9210-295-0001, Provision 3, Schedule (5); 2002-2003 Budget Act (Stats. 2002, ch. 379), Item 9210-295-0001, Provision 3, Schedule (8); 2001-2002 Budget Act (Stats. 2001, ch. 106), Item 210-295-0001, Provision 3, Schedule (8); 2000-2001 Budget Act (Stats. 2000, ch. 52), Item 210-295-0001, Provision 3, Schedule (8); 1999-2000 Budget Act (Stats. 1999, ch. 50), Item 210-295-0001, Provision 2, Schedule (8).

<sup>21</sup> 2003-2004 Budget Act (Stats. 2003, ch. 157) Final Change Book, p.655, Item 9210-295-0001, Provision 3.

This means, in essence, that the provisions of subdivision (c) in section 13730, when suspended by the Budget Act, are permissive, but the plain language of the 1993 amendment requires a written incident report for all domestic violence calls for assistance in subdivision (a). When statutory provisions conflict in this way, the Commission, like a court, relies on the following rule of statutory construction: “[W]hen two laws, upon the same subject, passed at different times, are inconsistent with each other, the one last passed must prevail.”<sup>22</sup> Accordingly, the 1993 amendment to subdivision (a) prevails over the suspension of subdivision (c).<sup>23</sup> Thus, preexisting law requires that every domestic violence related call for assistance be supported with a written domestic violence incident report. Consequently, the Commission finds that including the firearm and weapon information in the domestic violence incident report form, as required by the 2001 amendment to Penal Code section 13730, subdivision (c), is state-mandated.

Finance disagrees. In comments filed August 30, 2007, Finance argues that this conclusion is inconsistent with the Commission’s February 1998 decision in the *Domestic Violence Training and Incident Reporting* test claim (CSM-96-362-01) in which the Commission found that additional information on the domestic violence incident report was not mandated because the suspension of the statute made completion of the incident report optional, so the additional information under the test claim statute came into play only after a local agency elected to complete the incident report. Finance indicates in its comments that the Commission’s 1998 decision “found that the 1993 amendment to Penal Code section 13730 (a), (Stats. 1993, ch. 1230) ‘merely clarifies’ the reporting requirement of subdivision (c) rather than mandating a new or additional requirement.”

The Commission acknowledges that the analysis herein departs from the 1998 Commission decision. However, the plain language of the 1993 amendment to Penal Code section 13730, subdivision (a), requires a written incident report for all domestic violence calls. This amendment has never been the subject of a test claim, has never been determined by the Legislature or any court to mandate a new program or higher level of service, and is not pled here. Thus, it has not met the requirements of Government Code section 17581 to suspend a statute.

[¶]

The Commission finds, therefore, that existing law in Penal Code section 13730, subdivision (a), requires a written incident report for each domestic violence call. Therefore, including the firearm and weapon information in the domestic violence incident report form, as required by the 2001 amendment to Penal Code section 13730, subdivision (c)(3), is state-mandated.

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<sup>22</sup> *People v. Kuhn* (1963) 216 Cal.App.2d 695, 700.

<sup>23</sup> This does not mean that the suspensions in the Budget Acts are idle acts of the Legislature, since there were other findings in the Commission’s decision (CSM 4222) that are suspended.

These decisions were also not challenged, remain final, binding decisions, and are consistent with the Commission's findings in this case.

3. Reimbursement is required to support all domestic-violence related calls for assistance with a written incident report.

Based on the above, the Commission finds that the SCO's assertion that the mandate in Penal Code section 13730(a) is limited to situations where the officer is dispatched to a domestic violence related call for assistance, but after investigation determines that no crime was committed, or that the crime committed was not a domestic violence incident, is not consistent with the law or the Commission's decisions. Therefore, SCO's request to amend the parameters and guidelines in this respect is denied. As the Commission determined, reimbursement is required to support all domestic violence related calls for assistance with a written incident report, including those that result in a crime.

For purposes of clarification, however, other decisions of the Commission impact the reimbursement for writing these domestic violence incident reports, and may cause confusion in the filing of reimbursement claims. Although the Commission determined in *Domestic Violence Incident Reports II* (02-TC-18), that this domestic violence incident report required in subdivision (a) had to include the information in subdivision (c)(3) ("a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon"), reimbursement for including the information required by subdivision (c)(3) in the report is provided in 02-TC-18, and not eligible for reimbursement under the program at issue here, *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11). In addition, as noted in the decision in *Domestic Violence Incident Reports II* (02-TC-18), the Commission came to the opposite conclusion on a similar issue and denied the *Domestic Violence Training and Incident Reporting* test claim (CSM-96-362-01) in 1998. In that claim, reimbursement was requested for including information required by Penal Code section 13730(c)(1)(2) into the domestic violence incident report regarding the use of alcohol and controlled substances by the alleged abuser and any prior domestic violence response to the same address. The Commission found in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01) that the activity of including the new information into the report was not mandated by the state since the report required by subdivision (c) was suspended. Although the decision in 96-362-01 did not analyze the language in subdivision (a), the decision to deny reimbursement for including the information required by Penal Code section 13730(c)(1)(2) remains a final, binding decision.<sup>24</sup> Thus, reimbursement for writing the domestic incident report does not include reimbursement for including information on the use of alcohol and controlled substances by the alleged abuser and any prior domestic violence response to the same address. Clarifying language is added to the parameters and guidelines, consistent with these decisions, as follows:

In addition, reimbursement is **not** required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the

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<sup>24</sup> *California School Boards Assoc.*, *supra*, 171 Cal.App.4th 1183, 1200.

Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

**B. SCO’s request to amend the parameters and guidelines to clarify that reimbursement is not required for “interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator” is approved.**

The SCO states that local agencies are inappropriately claiming reimbursement for interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities to enforce a crime and assist the victim.

The Commission finds that these activities are not eligible for reimbursement because they go beyond the scope of the mandate to write the incident report. Investigation, arrests, and treatment of victim are not required by the plain language of the test claim statute and were not found to be reimbursable in the Commission’s decisions on the test claim and parameters and guidelines. In addition, local law enforcement agencies have a preexisting duty to investigate crime.<sup>25</sup>

Moreover, how officers perform duties relating to investigations and arrests are governed by local policy. Penal Code section 13701 specifically requires each agency to develop and adopt written policies and standards for officers’ responses to domestic violence calls. The policies have to cover arrests, assistance to victims, cite and release policies, et cetera.

Thus, the Commission approves the SCO’s request to amend the parameters and guidelines to clarify that reimbursement is not required to complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

**C. The added language clarifying the reimbursable activities is effective during the entire period of reimbursement.**

Because these amendments simply clarify the mandated activities and do not make substantive changes to the program, the clarification is effective during the entire period of reimbursement and may be applied by the SCO in its review of reimbursement claims filed before the SCO filed its request to amend these parameters and guidelines. Under the rules of statutory construction, a clarification of existing law may be applied to transactions predating its enactment without being considered a retroactive application of the law. The clarification is merely a statement of what the law has always been.<sup>26</sup>

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<sup>25</sup> Government Code section 26602; *People v. Bloom* (1969) 270 Cal.App.2d 731, 734.

<sup>26</sup> *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243; *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, 603.

## V. Conclusion

The Commission partially approves the SCO request to amend the parameters and guidelines for *Crime Statistics Reports for the Department of Justice* with the following underlined language:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a)): the following activity performed by a city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report

Reimbursement is **not** required to complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

In addition, reimbursement is **not** required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting (CSM-96-362-01)*. Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II (02-TC-18)*.

## PARAMETERS AND GUIDELINES

Penal Code Sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3), 13014, 13023, and 13730(a)

Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); and Statutes 2000, Chapter 626 (AB 715)

*Crime Statistics Reports for the Department of Justice*  
02-TC-04 and 02-TC-11

and

Penal Code Section 13023

Statutes 2004, Chapter 700 (SB 1234)

*Crime Statistics Reports for the Department of Justice Amended*  
07-TC-10

### I. SUMMARY OF THE MANDATE

On June 26, 2008, the Commission on State Mandates (Commission) considered the *Crime Statistics Reports for the Department of Justice* test claims (02-TC-04 and 02-TC-11) and determined that, beginning July 1, 2001, the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide the California Department of Justice (DOJ) with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, § 13014).
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, § 13023).
- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission finds that this is a reimbursable mandate from July 1, 2001 (the

beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025(h)(1) & (h)(3) & 12031(m)(1) & (m)(3)).

- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730(a), Stats. 1993, ch. 1230).

On July 31, 2009, the Commission considered the *Crime Statistics Reports for the Department of Justice Amended* test claim (07-TC-10). The claim was originally filed as an amendment to, and severed from, test claims 02-TC-04 and 02-TC-11, *Crime Statistics Reports for the Department of Justice*. The Commission determined that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on local law enforcement agencies to report the following in a manner to be prescribed by the Attorney General:

- Any information that may be required relative to hate crimes, as defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of one or more of the following *perceived* characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.
- Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of *association with a person or group with one or more of the following actual or perceived characteristics*: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.

On April 12, 2010, the Commission issued a Corrected Statement of Decision in *Crime Statistics Reports for the Department of Justice Amended* (07-TC-10) to correctly identify the operative and effective date of Penal Code section 13023, as amended by Statutes 2004, chapter 700, as January 1, 2005.

These test claims were filed by a city and a county. Although the test claim statutes refer to “local law enforcement agencies” or “local government entity,” the Commission’s findings and decisions are limited to city and county claimants.

On December 6, 2013, the Commission amended the parameters and guidelines to clarify the reimbursable activity related to Penal Code section 13730(a). This amendment is effective for the entire period of reimbursement for that statute, beginning July 1, 2001.

## **II. ELIGIBLE CLAIMANTS**

Any county, city, or city and county.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The City of Newport Beach and the County of Sacramento filed the *Crime Statistics Reports for the Department of Justice* test claims (02-TC-04 and 02-TC-11) on September 6, 2002, and November 22, 2002, respectively, establishing eligibility for reimbursement beginning July 1, 2001. The *Crime Statistics Reports for the Department of Justice Amended* test claim (07-TC-10) was filed as an amendment to 02-TC-04 and 02-TC-11 and, pursuant to Government

Code section 17557 (e), does not affect the filing date or period of reimbursement of the original test claims. However, Penal Code section 13023, as amended by Statutes 2004, chapter 700, became operative and effective on January 1, 2005. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 13023, as amended by Statutes 2004, chapter 700, are reimbursable on or after January 1, 2005.

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

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

#### **IV. REIMBURSABLE ACTIVITIES**

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

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

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

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are eligible for reimbursement:

### **One-Time Activities**

- A. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the reporting of the hate crime and demographic information required by Penal Code sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3), 13014, and 13023 to the California Department of Justice and the Attorney General.
- B. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the requirement in Penal Code section 13730 (a) (as amended by Stats. 1993, ch. 1230) to support all domestic violence related calls for assistance with a written incident report.

### **Ongoing Activities**

- A. Homicide Reports: (Pen. Code, § 13014; Stats. 1992, ch. 1338)

For a city, county, or city and county responsible for the investigation and prosecution of a homicide case, to provide the California Department of Justice, on a form distributed by the California Department of Justice, with demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background.

The following activities are eligible for reimbursement:

- 1. Extract demographic information from existing local records about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background, from local records in order to report the information to DOJ.
- 2. Report to the Department of Justice, on a monthly basis, demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background . Reporting may be accomplished electronically via the Electronic-Crime and Arrest Reporting Systems (E-CARS) Plus, or manually by submitting DOJ Form BCIA 15 (Supplemental Homicide Report), or other form distributed in accordance with Penal Code section 13014 by the Department of Justice.
- 3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice.

Reimbursement is not required to review and edit every report.

B. Hate Crime Reports: (Pen. Code, § 13023; Stats. 1989, ch. 1172; Stats. 1998, ch. 933; Stats. 2000, ch. 626; Stats. 2004, ch. 700)

For city, county, and city and county law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to hate crimes:

The following activities are eligible for reimbursement:

1. Extract the information required by the Attorney General relative to hate crimes from existing law enforcement records in order to report the information to the Department of Justice.<sup>1</sup>
2. Report to the Department of Justice on an annual and monthly basis, in a manner prescribed by the Attorney General, the information required relative to hate crimes. Reporting may be accomplished electronically via the Hate Crime Analysis, Tracking & Evaluation (HATE) System, manually by submitting the agency crime report, or any other manner prescribed by the Attorney General.
3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice.

Reimbursement is not required to review and edit every report.

C. Firearm Reports: (Pen. Code, §§ 12025(h)(1) & (h)(3) & 12031, (m)(1) & (m)(3); Stats. 1999, ch. 571)

For district attorneys to submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

The following activities are eligible for reimbursement *from July 1, 2001, through December 31, 2004 only*:

1. Extract the following information from law enforcement records in order to report the information to the Attorney General: race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.
2. Report to the Attorney General on Form CJSC 4, or in another manner prescribed by the Attorney General, profiles by race, age, gender, and

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<sup>1</sup> Penal Code section 13023 was amended in 2004 to clarify the definition of hate crime as provided in Penal Code section 422.55. (Stats. 2004, ch. 700.)

ethnicity for any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

Reimbursement is not required to review and edit the report.

D. Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730(a); Stats. 1993, ch. 1230)

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.

Reimbursement is **not** required to complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

In addition, reimbursement is **not** required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting (CSM-96-362-01)*. Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II (02-TC-18)*.

**V. CLAIM PREPARATION AND SUBMISSION**

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

## 2. Materials and Supplies

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

## 3. Contracted Services

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

## 4. Fixed Assets and Equipment

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

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

## B. Indirect Cost Rates

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

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However,

unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

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

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

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VI. RECORDS RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>2</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

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<sup>2</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than ~~60~~90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

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

## **IX. REMEDIES BEFORE THE COMMISSION**

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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 October 11, 2013, I served the:

**Draft Proposed Amendment to Parameters and Guidelines and  
Statement of Decision, Schedule for Comments, and Notice of Hearing**

Request to Amend Parameters and Guidelines

*Crime Statistics Reports for the Department of Justice, 12-PGA-01 (02-TC-04  
and 02-TC-11 and 07-TC-10)*

Related to Penal Code Section 13730(a); Statutes 1993, Chapter 1230  
California State Controller, Requestor

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 October 11, 2013 at Sacramento, California.



\_\_\_\_\_  
Heidi J. Palchik  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## Commission on State Mandates

Original List Date: 10/5/2012  
Last Updated: 10/11/2013  
List Print Date: 10/11/2013  
Claim Number: 12-PGA-01  
Issue: Crime Statistic Reports for the Department of Justice

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Camille Shelton Commission on State Mandates 980 9th Street, Suite 300 Sacramento, CA 95814	Tel: (916) 323-3562 Email: <a href="mailto:camille.shelton@csm.ca.gov">camille.shelton@csm.ca.gov</a> Fax: (916) 445-0278
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Ms. Jill Kanemasu State Controller's Office (B-08) Division of Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 322-9891 Email: jkanemasu@sco.ca.gov Fax:
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Mr. Brian Uhler Legislative Analyst's Office (B-29) 925 L Street, Suite 1000 Sacramento, CA 95814	Tel: (916) 319-8328 Email: brian.uhler@lao.ca.gov Fax:
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Mr. Jim Spano State Controller's Office (B-08) Division of Audits 3301 C Street, Suite 700 Sacramento, CA 95816	Tel: (916) 323-5849 Email: jspano@sco.ca.gov Fax: (916) 327-0832
Mr. Lee Scott Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Email: Lee.Scott@dof.ca.gov Fax:
Mr. Matthew Schuneman MAXIMUS 900 Skokie Boulevard, Suite 265 Northbrook, IL 60062	Tel: (847) 513-5504 Email: matthewschuneman@maximus.com Fax: (703) 251-8240



**RECEIVED**  
**November 27, 2013**  
*Commission on  
State Mandates*

November 27, 2013

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

Dear Ms. Halsey:

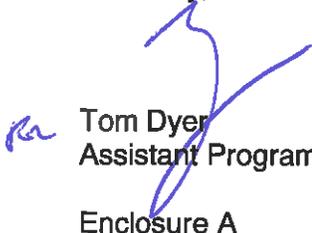
**Draft Proposed Amendment to Parameters and Guidelines and State of Decision on the Crime Statistics Reports for the Department of Justice, 12-PGA-01 (02-TC-04, 02-TC-11 and 07-TC-10)**

As requested in your letter of October 11, 2013, the Department of Finance (Finance) has reviewed the draft proposed amendment to the Parameters and Guidelines for the Crime Statistics Reports for the Department of Justice test claims 02-TC-04, 02-TC-11 and 07-TC-10. Finance concurs with the staff recommendation that the Commission approve that portion of the State Controller's Office request to amend the parameters and guidelines to clarify that reimbursement is not required for certain activities, including but not limited to interviewing parties, completing booking sheets or restraining orders, transporting victims to the hospital and booking alleged perpetrators.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an email address for the mailing list."

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

  
Tom Dyer  
Assistant Program Budget Manager

Enclosure A

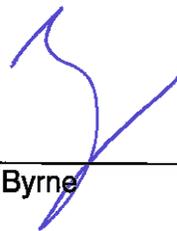
DECLARATION OF MICHAEL BYRNE  
DEPARTMENT OF FINANCE  
CLAIM NO. 12-PGA-01

I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

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

11/27/2013

\_\_\_\_\_  
at Sacramento, California.



\_\_\_\_\_  
Michael Byrne

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On December 3, 2013, I served the:

**Department of Finance Comments and State Controller's Office Comments**  
Request to Amend Parameters and Guidelines  
*Crime Statistics Reports for the Department of Justice, 12-PGA-01 (02-TC-04 and 02-TC-11 and 07-TC-10)*  
Related to Penal Code Section 13730(a); Statutes 1993, Chapter 1230  
California State Controller, Requestor

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 3, 2013 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# Commission on State Mandates

Original List Date: 10/5/2012  
Last Updated: 12/3/2013  
List Print Date: 12/03/2013  
Claim Number: 12-PGA-01  
Issue: Crime Statistic Reports for the Department of Justice

## Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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**JOHN CHIANG**  
California State Controller



November 27, 2013

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95816

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

**Re: Draft Proposed Amendment to Parameters and Guidelines and Statement of Decision, Schedule for Comments, and Notice of Hearing**  
*Crime Statistics Reports for the Department of Justice*  
12 PGA-01 (02-TC-04 and 02-TC-11 and 07-TC-10)  
Related to Penal Code Section 13730(a); Statutes 1993, Chapter 1230  
California State Controller, Requestor

Dear Ms. Halsey:

This letter constitutes the Controller’s response to the above-entitled matter. After review of staff’s analysis, we are in general agreement with the conclusion. However, we believe that there has been an omission in the final version of the draft Parameters & Guidelines.

One of the purposes of the proposed amendments was to address claims for activities that the Controller did not believe were reimbursable under the mandate, such as “interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities to enforce a crime and assist the victim.<sup>1</sup>” The staff’s draft agrees with this position, stating that the “Commission finds that these activities are not eligible for reimbursement

<sup>1</sup> Draft Proposed Amendment to Parameters and Guidelines and Statement of Decision, page 21.  
300 Capitol Mall, Suite 1850, Sacramento, CA 95814 ♦ P.O. Box 942850, Sacramento, CA 94250  
Phone: (916) 445-2636 ♦ Fax: (916) 322-1220

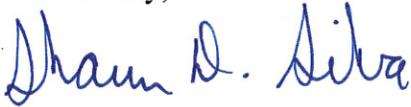
Heather Halsey, Executive Director

November 27, 2013

Page 2

because they go beyond the scope of the mandate to write the incident report.<sup>2</sup> However in its proposed amended language the draft omits the phrase “interviewing parties”. The Controller’s Office requests that the staff reinsert the phrase “interviewing parties” into the proposed amended language for the Parameters and Guidelines.

Sincerely,



SHAWN D. SILVA  
Senior Staff Counsel

SDS/cn

---

<sup>2</sup> *Id.*

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On December 3, 2013, I served the:

**Department of Finance Comments and State Controller's Office Comments**  
Request to Amend Parameters and Guidelines  
*Crime Statistics Reports for the Department of Justice, 12-PGA-01 (02-TC-04 and 02-TC-11 and 07-TC-10)*  
Related to Penal Code Section 13730(a); Statutes 1993, Chapter 1230  
California State Controller, Requestor

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 3, 2013 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# Commission on State Mandates

Original List Date: 10/5/2012  
Last Updated: 12/3/2013  
List Print Date: 12/03/2013  
Claim Number: 12-PGA-01  
Issue: Crime Statistic Reports for the Department of Justice

## Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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## Exhibit F

DIVISION OF LAW ENFORCEMENT  
1993 LEGISLATIVE BILL PROPOSAL14. Domestic Violence Definition

## I. SUMMARY

New legislation is needed to (1) clarify the definition of "domestic violence" and (2) standardize the method for reporting the incidents of domestic violence.

## II. BACKGROUND INFORMATION

A. Problem

1. The definition of domestic violence Section 13700(b) of the Penal Code (PC) is not interpreted uniformly by the law enforcement agencies reporting data to the Department of Justice (DOJ). The word "cohabitant" presents the most serious problem, because the statute does not define what types of relationships are to be included in this category. Consequently, some agencies report only spousal, dating or engagement relationships with the opposite sex. Other agencies not only report these relationships, but also include relationships between blood relatives, in-laws, and homosexuals. Law enforcement agencies need the definition clarified so that they submit standardized and comparable statistical data to DOJ.

Also, law enforcement agencies are not consistent in their interpretation of what constitutes a "domestic violence-related call for assistance" under 13730(a) PC. This statute does not make clear whether calls for assistance should include all calls which are dispatched as domestic violence calls, or only those calls which result in documented and verified cases of domestic violence. For example, a dispute may be a shouting match. If threats are made, however, a shouting match would change from a domestic dispute to domestic violence. This difference in the understanding of what needs to be reported results in a disparity of statistics among reporting law enforcement agencies.

2. The Law Enforcement Information Center (LEIC) is unaware of any specific case involvement in this problem.

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3. LEIC has received telephone complaints from contributing agencies regarding the difficulty in interpreting the definition of domestic violence and what constitutes a domestic violence-related call for assistance. In recognition of these two problems, LEIC staff developed an annual "Data Information and Limitations" sheet. This sheet is released to all requesters desiring domestic violence information. The sheet delineates the limitations of the data which should be considered when interpreting and using the data. The number of calls and agencies involved were not documented.
4. To investigate the problem of the various interpretations of domestic violence, LEIC staff conducted a survey of the 15 largest law enforcement agencies in California in 1988. The results revealed that some agencies used a very broad interpretation and included relationships between all family members, homosexuals and even platonic roommates. Another survey is presently being conducted of selected agencies and representatives from the California Law Enforcement Association of Record Supervisors (CLEARS), the Commission on Peace Officer Standards and Training (POST), California Peace Officers' Association (CPOA) and domestic alliance organizations.
5. LEIC has annual summary statistical data which shows the inconsistent reporting of domestic violence data by law enforcement agencies.
6. LEIC is not aware of any other state agency that collects and publishes statistical domestic violence data. Debbie Lee, Senior Program Specialist for the San Francisco Family Violence Project (415/821-4553) can be contacted regarding the history of domestic violence legislation.

B. Suggested Legislation

1. During the 1991/92 legislative session, Senator McCorquodale introduced Senate Bill (SB) 1541. This bill was opposed by the Division of Law Enforcement (DLE) due to several statutes in the bill which contained inconsistent definitions of domestic violence and added to the confusion over the relationships and interpretation of domestic violence.

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LEIC staff was authorized to work directly with Senator McCorquodale's staff to resolve the concerns regarding the definitions as referenced in SB 1541. Staff presented their proposed bill amendments to the consultant on SB 1541. The consultant (Heidi Foster) stated that there was not sufficient time to consider further amendments during this legislative session, but that the Senator would be interested in carrying a bill to standardize and clarify the definition of domestic violence in the next legislative session.

2. The San Francisco Family Violence Project staff have been strong advocates for domestic violence legislation, and would be a source of information about this problem. POST, CPOA and CLEARs could also be excellent sources of information on this problem.
3. The domestic alliance organizations are very active supporters of legislation protecting victims of domestic violence. LEIC staff has been in contact with these organizations regarding the definition of domestic violence. The name and the organizations contacted are: Debbie Lee, San Francisco Family Violence Prevention Fund (415/821-4553); and Deeana Jang, Staff Attorney, San Francisco Neighborhood, Domestic Relations Unit (415/627-0240).
4. Contributing law enforcement agencies and DOJ/LEIC would be favorably affected by this legislation. The data would then be a valuable tool for agencies as well as the Governor, the Legislature, the Attorney General and research programs.
5. State organizations such as POST, CPOA and CLEARs would be interested in this proposal.

### III. PROPOSAL

#### A. Existing Law

1. California Penal Code Section 13730(a) was enacted in 1984 (effective 1986) and requires each law enforcement agency to submit to the Attorney General monthly data on the total number of domestic violence-related calls received and the number of such cases involving weapons. (The Department requested that the breakout by type of weapon, if known, be reported.) PC 13730(a) has no definitive explanation of what constitutes a "call".

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Under 13730(b) PC the "Attorney General shall report annually to the Governor, the Legislature, and the public, the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county."

Section 13730(c) PC states, "Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident."

In compliance with these legislative mandates, LEIC annually publishes these summary data in "Crime and Delinquency in California," and statewide, county and agency data in the "Criminal Justice Profile" publications.

Penal Code Section 13700(a) defines domestic violence as "'Abuse' intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, or another." It is not necessary for aggravated or simple assault to occur to be reported as domestic violence under this definition.

Section 13700(b) PC definition of domestic violence is "abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or has or has had a dating or engagement relationship." This latter definition allows for various interpretations concerning types of relationships and living arrangements to be included under domestic violence.

2. Specific cases which are relevant to this issue are unknown to LEIC.
3. Examples of relevant case law from other jurisdictions are unknown to LEIC.

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4. Existing law does not clearly define the definition of domestic violence under 13700(b) PC. Nor does existing law under 13730(a) PC standardize what constitutes a domestic violence call. Penal Code Section 13700(b) PC allows inconsistent statistical reporting, and Section 13730(a) PC allows over-reporting of data.

B. Suggested Legislation

1. Amend Section 13700(b) of the Penal Code (PC) to clarify the term "cohabitant," because the statute does not define what types of relationships are to be included in this category. To accomplish this, LEIC will work with the Legislative Unit to develop precise bill language to clarify the term "cohabitant".

Amend Section 13730(a) of the Penal Code to include that "Domestic Violence-Related Calls for Assistance" must be supported with a written report identifying the domestic violence incident, as stated in Section 13730(c) PC.

2. Definitions for domestic violence can also be found in Section 1219(d)(2)(A) of the Code of Civil Procedure; Section 277(a)(1) of the Penal Code (PC); 1000.6 PC; and 12028.5 PC.
3. The existence of similar statutory provisions in other jurisdictions are unknown to LEIC.
4. The mission of LEIC is to report accurate data and to analyze and interpret that data, the information reported must be consistent and uniform.

If Agency "A", interprets "cohabitant" (13700(b) PC) as only spousal, dating, or engagement relationships with the opposite sex; and Agency "B" interprets "cohabitant" to include the above relationships, but also includes relationships between blood relatives, in-laws and homosexuals, inconsistent information is being reported.

Agencies can also be over-reporting the data, if contributing agencies are including domestic disputes when reporting counts of domestic violence.

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5. An alternative method of releasing an Information Bulletin was considered. While an Information Bulletin may help clarify some parts of the domestic violence definition, LEIC believes that an improved definition should be obtained through legislation in order to achieve consistency of reporting.

C. Fiscal Impact

1. There is no fiscal impact to DOJ with this proposal. The new legislation would require the Department to create and print forms for distribution to contributing agencies. The form would contain the new definition of domestic violence and procedures for reporting incidents of domestic violence. The cost of printing annual forms has already been budgeted. In addition, a monitoring system would be advisable to ensure that the criteria established in the new legislation were being followed. This could be accomplished by either telephone surveys or field contacts.
2. Contributing law enforcement agencies could use their present systems for reporting data to the Department with no additional cost.

D. History

1. Prior legislation has not been enacted for amendments to 13730(a) PC; however, 13700(b) PC had a minor technical change enacted in the 1992 legislative session which becomes effective on 1/1/93.
2. Circumstances have remained the same with local law enforcement agencies interpreting domestic violence statute codes differently. This results in inconsistent and inaccurate data to describe the extent of domestic violence activity in California. New legislation would clarify the definition and standardize the reporting of domestic violence incidents.
3. Judicial or executive branch resolutions of this problem are not applicable.

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E. Public Policy

1. New legislation would provide a clear and concise definition of domestic violence and a standardized method for reporting the incidents of domestic violence. This information would then be a valuable tool for use by criminal justice agencies, the Governor, the Attorney General, the Legislature, researchers, domestic alliance organizations, etc.
2. No related public policy would be affected by this proposal. However, this opportunity to work directly with the legislature and domestic alliance organizations would allow the Attorney General to take an active role in support of victim's of domestic violence and sponsoring domestic violence legislation.

**MONTHLY REPORT OF  
DOMESTIC VIOLENCE-RELATED CALLS FOR ASSISTANCE**  
California Penal Code (PC) Section 13730(a)

Type of data		Number
Total domestic violence calls received .....		
Total cases in which weapons were involved .....		
<b>S U B T O T A L</b>	Firearm .....	
	Knife or cutting instrument .....	
	Other dangerous weapon .....	
	Personal weapon (hands, fists, feet, etc.) .....	

NAME OF AGENCY \_\_\_\_\_

AGENCY NCIC NUMBER \_\_\_\_\_

REPORT PERIOD (MONTH AND YEAR) \_\_\_\_\_

PREPARED BY \_\_\_\_\_

**DEFINITIONS:**

The following definitions are to be used when completing this form:

**DOMESTIC VIOLENCE** - "Abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship." (Section 13700(b) PC)

**ABUSE** - "Intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another." (Section 13700(a) PC)

**INSTRUCTIONS FOR COMPLETION:**

1. Enter the total number of domestic violence-related calls received by your agency in the "Total domestic violence calls received" column. Of the "Total domestic violence calls received," enter the number of cases involving weapons in the "Total cases in which weapons were involved" column. Of the "Total cases in which weapons were involved," enter the subtotal for each weapon category.
2. Please complete one form for each month and submit the form with your "Return A - Monthly Return of Offenses Known to the Police."
3. *If there are no calls received during the report period, write the word "NONE" across the face of this form and submit it with your "Return A."*

RETURN TO:  
OFFICE OF MANAGEMENT, EVALUATION AND TRAINING  
LAW ENFORCEMENT INFORMATION CENTER  
P. O. BOX 903427  
SACRAMENTO, CA 94203-4270

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

GUIDELINES AND CURRICULUM  
FOR LAW ENFORCEMENT RESPONSE TO  
DOMESTIC VIOLENCE

1988



# Commission on Peace Officer Standards and Training

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## F O R E W O R D

Penal Code Section 13519 requires the Commission on Peace Officer Standards and Training to establish guidelines and training for law enforcement's response to domestic violence. This publication prescribes those guidelines and the training curriculum required for recruit and in-service officers.

The guidelines for law enforcement agencies are deliberately brief and intended to be elaborated upon by law enforcement administrators and complemented by the training course curricula. All pertinent requirements of the Penal Code, Title 5, Chapter 1, commencing with Section 13700, are provided for in the guidelines.

These guidelines and curriculum are updated with this edition as a result of 1987 law changes relating to emergency protective orders (Assembly Bill 1599) and seizure of firearms by peace officers at scenes of domestic violence incidence (Assembly Bill 416).

We are appreciative of the original POST Domestic Violence Advisory Committee who labored tirelessly in developing these guidelines and curriculum, and to all the people who assisted POST with this update which reflects recent law changes.

Questions concerning these guidelines and curriculum should be directed to the Training Program Services Bureau at (916) 739-5372.



NORMAN C. BOEHM  
Executive Director



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## COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

### Introduction

Domestic violence is a growing problem in both California and the United States. Statistics from the California Department of Justice reveal that in almost one third of all willful homicides, the victim was killed by a spouse, parent or child. More dramatically, over one half of all female homicide victims were killed by a spouse, parent or child.<sup>1</sup> Hundreds of thousands of Americans are harmed, not by strangers, but by those they trust and love. They are victimized not on the street nor in the workplace but in their own homes. Children who are abused or who live in homes where parents are battered carry the terrible lessons of violence with them into adulthood. A great proportion of those who assault both strangers and loved ones were raised themselves in violent households. Most authorities agree that violence is learned behavior. Accordingly, to tolerate family violence is to allow the seeds of violence to be sown into the next generation.

When the President's Task Force on Victims of Crime studied the experience of victims in this country, it recognized that family violence is often much more complex in causes and solutions than crimes committed by unknown attackers. To be abused by a spouse, a parent, a trusted adult or by one's own child or to witness such abuse carries with it a particular agony. Victims wrestle with feelings of fear, loyalty, love, guilt and shame. In this they often face conflicts not experienced by those attacked by strangers. Adults will be torn between the desire to shield and help a loved one and their responsibility toward their own safety or others in the household. Children often face alone the terrible truth that those who should protect them are in fact a source of harm. Anyone who lives in a violent home experiences an essential loss. The one place on earth where they should feel safe and secure has become instead a place of danger. A victim of domestic violence is no less a victim than one set upon by strangers.

In 1984, the California Legislature passed Senate Bill 1472 (Watson) (now Section 13519, and 13700 et seq. of the Penal Code). This law requires:

- o POST, by January 1, 1986, to develop guidelines for law enforcement response to domestic violence cases. (Penal Code Section 13519(d))
- o POST, by January 1, 1986, to implement into the Basic Course instruction in the handling of domestic violence complaints for law enforcement officers. (Penal Code Section 13519)
- o All local police and sheriffs' officers who have received their basic training prior to January 1, 1986, to attend a supplementary training course on domestic violence by January 1, 1989. (Penal Code Section 13519(c))

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<sup>1</sup> Lois Haight Herrington, Preface to the Final Report, U.S. Attorney General's Task Force on Family Violence (Washington: Department of Justice, 1984), iii-iv.



- o POST to develop the necessary course(s) and guidelines to implement the mandate listed above, in consultation with appropriate groups and individuals, to include specific organizations mentioned in the bill. (Penal Code Section 13519(d))
- o POST, in consultation with these groups and individuals, to review existing training programs to determine how domestic violence topics might be included. (Penal Code Section 13519(d))
- o Law enforcement agencies to adopt and implement written policies and standards for response to domestic violence calls by January 1, 1986 and make them available upon request. (Penal Code Section 13701)
- o Law enforcement agencies are also required to maintain records of protection orders issued in domestic violence incidences and to compile certain statistical data from domestic violence calls received. (Penal Code Section 13710)
- o Law enforcement agencies to develop a system for recording all domestic violence related calls for assistance made to the department, including reporting requirements, as determined by the Attorney General by January 1, 1986. Each law enforcement agency is also required to develop an Incident Report form that includes a Domestic Violence Identification Code. (Penal Code Section 13730(c))

The purpose of this law is to address domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victims and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is not the intent of the legislature to remove a peace officer's individual discretion where that discretion is necessary, nor is it the intent of the legislature to hold individual peace officers liable for exercising such discretion.

In 1987, the California Legislature passed Assembly Bill 1599 (Speier) now Section 546 of the Code of Civil Procedure. This law, operative July 1, 1988, requires the designation by the Presiding Judge of the Superior Court of at least one Judge, Commissioner, or referee in each county to be available, as specified, to orally issue, by telephone or otherwise, emergency protective orders against domestic violence which would be issued at all times when the court is not in session upon the request of a peace officer. As a result of this law, Guideline #9 was added to these guidelines for the 1988 edition.

Another 1987 law change (Assembly Bill 416) authorizes peace officers to seize and take temporary custody of firearms under specified circumstances at domestic violence scenes. As a result, Guideline #19 was added for this 1988 edition.

The following are guidelines for law enforcement response to domestic violence. These guidelines do not address child abuse cases nor cases of domestic disputes where there is no domestic violence or criminal violation. Whenever the word "shall" is used, the appropriate legal citation is referenced. Whenever the word "should" is used, law enforcement agencies should consider the substitution of the word with "shall." Departmental policies and



procedures may be more specific and may supersede these guidelines. Relevant training on these guidelines should be provided to appropriate employees. For clarification, guidelines are presented in full capitalization and explanatory information in lower case. Penal Code Section 13700 specifies the following definitions which are included for clear understanding of these guidelines:

"ABUSE" MEANS INTENTIONALLY OR RECKLESSLY CAUSING OR ATTEMPTING TO CAUSE BODILY INJURY, OR PLACING ANOTHER PERSON IN REASONABLE APPREHENSION OR IMMINENT SERIOUS BODILY INJURY TO HIMSELF OR ANOTHER.

"DOMESTIC VIOLENCE" IS ABUSE COMMITTED AGAINST AN ADULT OR FULLY EMANCIPATED MINOR WHO IS A SPOUSE, FORMER SPOUSE, COHABITANT, FORMER COHABITANT, OR A PERSON WITH WHOM THE SUSPECT HAS HAD A CHILD OR HAS HAD A DATING OR ENGAGEMENT RELATIONSHIP.

"OFFICER" MEANS ANY LAW ENFORCEMENT OFFICER EMPLOYED BY A LOCAL POLICE DEPARTMENT OR SHERIFF'S OFFICE, CONSISTENT WITH PENAL CODE SECTION 830.1.

"VICTIM" MEANS A PERSON WHO IS A VICTIM OF DOMESTIC VIOLENCE.

This document specifies POST's general guidelines for law enforcement response to domestic violence and curriculum mandated by Penal Code Section 13519.

## GUIDELINES FOR LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

### I. ENFORCEMENT OF LAWS

#### Guideline 1 - ENFORCE LAWS RELATING TO DOMESTIC VIOLENCE.

Historically, law enforcement agencies have utilized a variety of dispute resolution methods as alternatives to arrest in domestic violence incidents. Based on public attitudes, lack of prosecution of domestic violence cases, and departmental priorities, a number of factors influenced law enforcement officers to make no arrest in a majority of cases. It is the intent of the legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. The following factors, for example, should not be used to avoid making an arrest:

1. marital status of suspect and victim,
2. whether or not the suspect lives on the premises with the victim,
3. existence or lack of restraining orders,
4. potential financial consequences of arrest,
5. complainant's history or prior complaints,
6. verbal assurances that violence will cease,
7. complainant's emotional state,
8. non-visible injuries,
9. location of the incident (Public/Private),
10. speculation that complainant may not follow through with the prosecution, or that the case may not result in a conviction.



## II. FELONY ARREST

Guideline 2 - MAKE AN ARREST WHEN THERE IS REASONABLE CAUSE TO BELIEVE THAT A FELONY HAS OCCURRED.

## III. MISDEMEANOR ARREST

Guideline 3 - MAKE AN ARREST WHEN THERE IS REASONABLE CAUSE TO BELIEVE THAT A MISDEMEANOR (INCLUDING VIOLATIONS OF COURT ORDERS) HAS OCCURRED IN THE OFFICER'S PRESENCE.

- A. Officers considering releasing the suspect on a citation shall evaluate the likelihood of a continuing offense which is one of the statutory conditions under which a field release is not appropriate. Any one of the following may support the likelihood of a continuing offense:
1. Whether the suspect has a prior history of arrests or citations involving domestic violence.
  2. Whether the suspect is violating a criminal court-issued-stay away order.
  3. Whether the suspect has previously violated, or is currently violating, valid restraining orders.
  4. Whether the suspect has a prior history of other assaultive behavior (e.g., arrest/convictions for battery or aggravated assaults).
  5. Statements taken from the victim that the suspect has a history of physical abuse towards the victim.
  6. Statements taken from the victim expressing fear of retaliation or further violence should the suspect be released.

## IV. PRIVATE PERSON'S ARREST (CITIZEN'S)

Guideline 4 - INFORM THE VICTIM OF THE RIGHT TO MAKE A PRIVATE PERSON'S ARREST WHEN A CRIME HAS BEEN COMMITTED OUTSIDE THE OFFICER'S PRESENCE WHICH DOES NOT MEET THE REQUIREMENTS FOR A FELONY ARREST. WHENEVER POSSIBLE, SUCH DISCUSSION SHALL BE HELD OUT OF THE PRESENCE OF THE SUSPECT.

Guideline 5 - ACCEPT A PRIVATE PERSON'S ARREST. OFFICERS SHOULD NOT DISSUADE VICTIMS FROM MAKING A LAWFUL PRIVATE PERSON'S ARREST.

## V. REPORTING

Guideline 6 - WRITE A REPORT IN ALL INCIDENTS OF DOMESTIC VIOLENCE. PENAL CODE SECTION 13730 REQUIRES SUCH A REPORT SHALL BE IDENTIFIED ON ITS FACE AS A DOMESTIC VIOLENCE INCIDENT AND BE RETRIEVABLE.



Guideline 7 - IDENTIFY, IN THE REPORT, WHETHER OR NOT WEAPONS WERE INVOLVED. (PENAL CODE SECTION 13730(a))

Guideline 8 - PROVIDE THE VICTIM WITH THE CASE NUMBER OF THE REPORT, OR IF NOT IMMEDIATELY AVAILABLE, EXPLAIN TO THE VICTIM HOW THE NUMBER MAY BE OBTAINED.

## VI. COURT PROTECTIVE ORDERS

Guideline 9 - REQUEST EMERGENCY PROTECTIVE ORDERS WHEN APPROPRIATE.

The Code of Civil Procedure Section 546(b) requires that at least one judge, commissioner, or referee be reasonably available to orally issue, by phone or otherwise, an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence as defined in Section 542 Code of Civil Procedure. Such an order may also exclude the suspect from the premises and determine temporary custody of minor children.

### A. Ascertain Need for Emergency Order

1. When the officer has reasonable grounds to believe a person is in immediate and present danger of domestic violence by a family or household member, the officer may request an ex parte emergency restraining order from the on-call judge.
2. Officers should make this determination based on the complainant's allegations of a recent incident of abuse or threat of abuse by a family or household member.
3. The following situations are examples of those which may provide grounds for requesting an emergency order:
  - a. The suspect is being arrested for a charge related to a domestic violence incident.
  - b. The suspect has a history of domestic violence.
  - c. The victim expresses fear of retaliation or further violence.
  - d. Threats of serious danger have been made to the victim or to the victim's family.

### B. Request Emergency Order

1. Officer shall contact the judge, commissioner, or referee designated to be on-call to issue emergency orders by telephone or otherwise and assert grounds for belief that order is appropriate.
2. Upon oral issuance of the order by the on-call judge, the officer requesting the order shall reduce it to writing, using Judicial Council forms provided, and sign the order.



C. Issued Orders

1. The officer shall serve a copy of the emergency order on the restrained party, if the party can be reasonably located.
2. The officer shall give a copy of the emergency order to the protected party.
3. The officer who requested the emergency order, while on duty, shall carry a copy of the order.
4. A copy of the emergency order shall be filed with the court as soon as practical after issuance.
5. An emergency protective order shall expire not later than the close of judicial business on the next day of judicial business following the day of its issue.

D. Enforcement Procedures

1. Where a violation of an emergency order has occurred, arrest in accordance with Guideline 10, Section B.

E. Officer Immunity

1. A police or sheriff's officer, acting pursuant to Section 546 CCP, shall not be held civilly or criminally liable if he or she acted in good faith in requesting and enforcing an emergency protective order.

Guideline 10 VERIFY AND ENFORCE RESTRAINING ORDERS.

There are different types of restraining orders issued by a court in domestic violence situations. Penal Code Section 13710 requires law enforcement agencies to maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, restraining orders, and proofs of service in effect. This section also requires that the systematic record shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

A. Verification of Restraining Orders

Whenever a complainant advises of the existence of a restraining order, the officer should ascertain:

1. Whether a restraining order is on file with the department or whether complainant has copy of restraining order in possession.
2. Whether a restraining order is still valid as to duration/time.



3. Whether the proof of service or prior notice exists or that the suspect was in court when the order was made.
4. The terms of the restraining order.

B. Arrest Criteria and Enforcement Procedures

1. A violation of a restraining order is a misdemeanor under either Penal Code Sections 273.6 or 166.(4). Make an arrest when there is reasonable cause to believe the subject of the restraining order has violated the order in the presence of the officer and any one of the following conditions is met:
  - a. The existence of the order and proof of service on the suspect has been verified by the officer.
  - b. The complainant produces a valid copy of the order bearing a file stamp of a court and a proof of service on the subject.
  - c. The existence of the order has been verified by the officer; no proof of service is required if the order reflects that the suspect was personally present in court when the order was made.
  - d. The existence of the order has been verified, and there is proof that the suspect has previously been admonished or served a copy of the order.
2. When the officer verifies that a restraining order exists, but cannot verify proof of service or prior knowledge of order by suspect, the officer should:
  - a. Inform the subject of the terms of the order.
  - b. Admonish the subject of the order, that the subject is now on notice and that the violation of the order will result in arrest. If the subject continues to violate the order after being advised of the terms, an arrest should be made.
  - c. If the suspect complies after admonishment of the terms, the officer shall make a retrievable report pursuant to Penal Code Section 13730(c)) showing the suspect was admonished/advised of the terms of the order, the specific terms of the order suspect was advised about, the name of the admonishing officer, time and date. The department's copy of the restraining order will be updated to reflect the admonishment information listed above.
3. In the event the suspect has left the scene of the incident, an investigation should be made to determine if a crime has been committed. Penal Code Sections 13730(c) and 13701(i)



require that a retrievable report shall be made and complainant shall be advised of the follow-up criminal procedure and case number of the report.

C. Order Not Verifiable

1. When the victim is not in possession of the restraining order, and/or in case of computer error, officers may not be able to confirm the order's validity.
  - a. Penal Code Section 13730(c) requires that an officer shall write a report, give the victim the police report number and direct the victim to contact the appropriate department unit for follow-up information.
  - b. When an order is not verifiable through the verification procedures, officers should advise the victim of the right to make a private person's arrest for the appropriate violation.

Guideline 11 - VERIFY AND ENFORCE CRIMINAL COURT-ISSUED STAY-AWAY ORDERS

A. Verification of Stay-Away Orders

1. A stay-away order is issued in a criminal case where the probability of victim intimidation exists and violation of such is a misdemeanor under Penal Code Section 166.(4). In domestic violence incidents where a person advises an officer that a stay-away order has been issued, the officer should attempt to ascertain the terms and validity of the order.
  - a. Request the victim show a copy of the order. Verify, through the department, that the suspect is under the court's jurisdiction, or
  - b. Verify, through the department, that a stay-away order has been issued against the suspect.

B. Arrest Criteria and Enforcement Procedures

1. The Code of Civil Procedure Section 540 et seq. and 527.6 requires that when the order has been verified, officers shall effect an arrest if the suspect has violated any terms of the order. The report should note the specific violations of the order, and the victim shall be given the police report number for reference pursuant to Penal Code Section 13701(i).
2. A violation of the order is a violation of Penal Code Section 166.(4). This violation can be added to other charges such as assault or battery.



3. An act of victim intimidation relating to the court proceedings is a violation of Penal Code Section 136 et seq. Examples of intimidation include:
  - a. Attempting to prevent or dissuade a victim from attending or giving testimony at any proceeding is a misdemeanor.
  - b. Using force, or expressing or implying threat of force or violence related to the court proceeding is a felony.

C. Order Not Verifiable

1. When the victim is not in possession of the stay-away order, and/or in cases of computer error, officers may not be able to confirm the order's validity.
  - a. Penal Code Section 13730 requires that officers shall write a report, give the victim the police report number and direct the victim to contact the appropriate department unit for follow up information.
  - b. When an order is not verifiable through the verification procedures, officers should advise the victim of the right to make a private person's arrest for the appropriate violation.

VII. TENANCY

Guideline 12 - REQUEST A PERSON WHO IS NOT IN LAWFUL POSSESSION OF THE PREMISES TO LEAVE THE PREMISES WHEN: (1) THE COMPLAINANT IS IN LAWFUL POSSESSION OF THE PREMISES, AND (2) THE COMPLAINANT HAS REQUESTED THAT THE PERSON LEAVE THE PREMISES.

- A. Arrest the suspect under Penal Code Section 602.5 if the suspect does not leave upon request.
- B. The officer should consider the possibility of requesting an emergency protective order pursuant to Section 546 of the Code of Civil Procedures excluding the suspect from the premises.
- C. The officer should refer the complainant for a temporary restraining order or other appropriate civil remedy if the complainant requesting removal cannot show proof of lawful possession. "Lawful possession" of the premises is shown by a rental agreement, cancelled rent check, lease, grant deed, verification from landlord, court order, or other document showing person(s) to be removed.

VIII. VICTIM ASSISTANCE

Guideline 13 - ASSIST IN OBTAINING APPROPRIATE MEDICAL ATTENTION IF A COMPLAINANT CLAIMS INJURY WHETHER VISIBLE OR NOT.



Guideline 14 - ASSIST IN MAKING ARRANGEMENTS TO TRANSPORT THE VICTIM TO AN ALTERNATE SHELTER IF THE VICTIM EXPRESSES A CONCERN FOR SAFETY OR THE OFFICER DETERMINES A NEED EXISTS.

Guideline 15 - STAND BY FOR A REASONABLE AMOUNT OF TIME WHEN A COMPLAINANT REQUESTS POLICE ASSISTANCE WHILE REMOVING ESSENTIAL ITEMS OF PERSONAL PROPERTY.

Guideline 16 - PROVIDE THE FOLLOWING TO THE VICTIM IN WRITING:

- A. For further information about a shelter, you may contact \_\_\_\_\_.
- B. For information about other services in the community, you may contact \_\_\_\_\_.
- C. You have the right to ask the District Attorney to file a Criminal Complaint.
- D. You have the right to go to the Superior Court and file a petition requesting any of the following orders for relief:
  1. An order restraining the attacker from abusing the victim and other family members.
  2. An order directing the attacker to leave the household.
  3. An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
  4. An order awarding the victim or the other parent custody of or visitation with a minor child or children.
  5. An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
  6. An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
  7. An order directing the defendant to make specific debit payments coming due while the order is in effect.
  8. An order directing that either or both parties participate in counseling.
- E. You have the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property and any other related expenses incurred by the victim or any agency that shelters the victim.



IX. SEIZURE OF FIREARMS

GUIDELINE 17 - SEIZE AND TAKE TEMPORARY CUSTODY OF FIREARMS IN PLAIN SIGHT OR OBTAINED PURSUANT TO A CONSENT SEARCH WHEN THERE IS A THREAT OF VIOLENCE OR A PHYSICAL ASSAULT AT THE SCENE OF A DOMESTIC VIOLENCE INCIDENT. (PENAL CODE 12028.5)

- A. This provision of law is permissive and allows the officer discretion.
- B. No firearm seized pursuant to this section shall be held less than 48 hours.
- C. Provide person from whom the firearm is taken a receipt describing the firearm and stating where and when the firearm can be recovered.
- D. If the seized firearm is not to be used as evidence in a criminal proceeding resulting from the domestic violence incident, or was not illegally possessed, it shall be made available for return no later than 72 hours after the seizure

X. OFFICER SAFETY

Guideline 18 - EXERCISE REASONABLE CARE FOR THE SAFETY OF OFFICERS AND PARTIES INVOLVED AND NO PROVISION OF THIS GUIDELINE SHALL SUPERSEDE THAT RESPONSIBILITY.



## CURRICULUM

### LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

#### COURSE OUTLINE

#### POST ADMINISTRATIVE MANUAL REFERENCE

Law

Commission Procedure D-7

#### LEGAL REFERENCE

Penal Code Section 13519, effective January 1, 1985, required the Commission to implement a course of instruction in the handling of domestic violence complaints by January 1, 1986. The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction on specified procedures and techniques. All law enforcement officers who have received their basic training before January 1, 1986 shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the Commission. This training shall be completed no later than January 1, 1989. Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on domestic violence. Where appropriate, training presenters should include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women, in the presentation of training.

#### BACKGROUND

This curriculum was developed with the input of an advisory committee, as specified in the law. The curriculum is based upon POST guidelines for law enforcement response to domestic violence which was also developed with the input of the advisory committee.

#### CERTIFICATION INFORMATION

The following curriculum is applicable in its entirety to the Basic Course and to in-service officers who have received their basic training before January 1, 1986. This curriculum is in addition to the existing Basic Course curriculum on Law, Disputes, and Family Disputes. This supplementary training for in-service officers may be included as part of Advanced Officer Courses or certified as a Technical Course. To assist presenters and instructors, the POST Basic Course Unit Guides are available upon request and contain more detailed information on this curriculum.



TOPICAL OUTLINE

Recommended Hourly Breakdown  
for Supplementary Training

A. Overview of Domestic Violence	1.5
B. Legislative Intent/POST Guidelines	1.0
C. Enforcement of Laws	1.5
D. Court Orders	1.0
E. Tenancy	.5
F. Documenting Domestic Violence Incidents	.5
G. Victim Assistance and Referral	.5
H. Practical Application/Student Evaluation	<u>1.5</u>
TOTAL MINIMUM HOURS	8.0

LEARNING GOAL AND PERFORMANCE OBJECTIVES

Learning Goal: The student will gain the ability to handle domestic violence incidents. (Learning Goal 8.47.0)

A. Overview of Domestic Violence

- 80% 1. The student will identify the difference between domestic violence and a domestic dispute. (P.O. 8.47.1)
  
- 80% 2. The student will identify the extent, nature and impact of domestic violence including: (P.O. 8.47.2)
  - A. Frequency of occurrence/escalating nature and lethality
  - B. Impact on victims, children, and batterers
  - C. Cycle of violence
  - D. Dynamics of the victim and the batterer
  - E. Learned behavior
  - F. Family structure and culture
  - G. Effectiveness and impact of law enforcement intervention
  - H. Specific Interviewing Skills

B. Legislative Intent/POST Guidelines

- 80% 1. The student will identify essential elements of Penal Code Sections 13700 et seq. and 13519 and legislative intent for law enforcement response to domestic violence incidents including: (P.O. 8.47.3)
  - A. Domestic violence as a serious crime against society
  - B. Enforcement of laws to provide maximum protection to the victim from abuse
  - C. Violent behavior in the home is criminal behavior
  - D. Not to remove a peace officer's individual discretion
  - E. Not to hold individual peace officers liable for exercising such discretion
  - F. POST Guidelines



C. Enforcement of Laws

80% 1. The student will identify the officer's responsibility and authority in taking enforcement action related to domestic violence incidents including: (P.O. 8.47.4)

- A. Felonies
- B. Misdemeanors
- C. Private person's arrest
- D. Cite and release
- E. Seizure of firearms

D. Court Orders

80% 1. The student will identify the officer's responsibilities and authority regarding court orders including: (P.O. 8.47.5)

- A. Restraining orders/emergency protective orders
- B. Stay-away orders

E. Tenancy

80% 1. The student will identify the officer's responsibility and authority with tenancy issues related to domestic violence and domestic disputes (Penal Code 602.5). (P.O. 8.47.6)

F. Documenting Domestic Violence Incidents

80% 1. The student will identify the officer's responsibility in documenting incidents of domestic violence including: (P.O. 8.47.7)

- A. Written report
- B. Legal requirements upon law enforcement agencies
- C. Providing victim with case number of the report

G. Victim Assistance and Referral

80% 1. The student will identify the officer's responsibility to provide assistance to victims of domestic violence including: (P.O. 8.47.8)

- A. Medical attention
- B. Transportation to alternate shelter
- C. Stand by for removal of personal property
- D. Personal safety options

80% 2. The student will identify the officer's responsibility in referring victims of domestic violence for legal options and criminal follow up. (P.O. 8.47.9)



80% 3. The student will identify the services most commonly provided by social services agencies for victims of domestic violence. (P.O. 8.47.10)

H. Practical Application/Student Evaluation

80% 1. Given an exercise, the student will handle a domestic violence situation meeting all criteria of legislative intent, safety, effectiveness, legality, and reasonableness. (P.O. 8.47.11)



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## Senate Bill No. 1472

## CHAPTER 1609

An act to add Section 13519 to, and to add and repeal Title 5 (commencing with Section 13700) to Part 4 of, the Penal Code, relating to training of peace officers, and making an appropriation therefor.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

## LEGISLATIVE COUNSEL'S DIGEST

SB 1472, Watson. Domestic violence: law enforcement training. Existing law provides for the issuance of protective court orders in cases involving domestic violence. Existing law also requires that peace officers receive training in first aid, child abuse, and sexual assault cases in order to obtain the basic certificate issued by the Commission on Peace Officer Standards and Training.

This bill would require peace officers to receive specified training in responding to domestic violence calls. The bill would require that the course of instruction, the learning and performance objectives, and the standards for the training be developed by the Commission on Peace Officer Standards and Training, in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence, as specified. The bill would appropriate \$40,000 from the Peace Officers Training Fund for support of the commission for expenses of convening the necessary experts and \$25,000 to the Department of Justice for compilation of information relating to domestic violence. Additionally, the bill would provide procedures for law enforcement officers in responding to domestic violence-related calls and make other provisions relating to domestic violence.

This bill would impose a state-mandated local program by requiring local law enforcement agencies to adopt and comply with specified procedures with respect to domestic violence incidents, to maintain records of protection orders issued in domestic violence incidents, and to compile and record by categories all domestic violence-related calls received.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the

constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill, in compliance with Section 2231.5 of the Revenue and Taxation Code, would also repeal, as of January 1, 1991, the provisions contained in the bill for which state reimbursement is required.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares that:

(a) A significant number of homicides, aggravated assaults, and assaults and batteries occur within the home between adult members of families. Research shows that 35 to 40 percent of all assaults are related to domestic violence.

(b) The reported incidence of domestic violence represents only a portion of the total number of incidents of domestic violence.

(c) Twenty-three percent of the deaths of law enforcement officers in the line of duty results from intervention by law enforcement officers in incidents of domestic violence.

(d) Domestic violence is a complex problem affecting families from all social and economic backgrounds.

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is not the intent of the Legislature to remove a peace officer's individual discretion where that discretion is necessary, nor is it the intent of the Legislature to hold individual peace officers liable.

SEC. 2. Section 13519 is added to the Penal Code, to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

- (1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.
- (2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.
- (3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.
- (4) The nature and extent of domestic violence.
- (5) The legal rights of, and remedies available to, victims of domestic violence.
- (6) The use of an arrest by a private person in a domestic violence situation.
- (7) Documentation, report writing, and evidence collection.
- (8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 5 of Part 2.
- (9) Tenancy issues and domestic violence.
- (10) The impact on children of law enforcement intervention in domestic violence.
- (11) The services and facilities available to victims and batterers.
- (12) The use and applications of this code in domestic violence situations.
- (13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (14) Verification and enforcement of stay-away orders.
- (15) Cite and release policies.
- (16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission. This training shall be completed no later than January 1, 1989.

Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but

shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Forty thousand dollars (\$40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.

SEC. 3. Title 5 (commencing with Section 13700) is added to Part 4 of the Penal Code, to read:

## TITLE 5. LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

### CHAPTER 1. GENERAL PROVISIONS

13700. As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, or another.

(b) "Domestic Violence" is abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or has or has had a dating or engagement relationship.

(c) "Officer" means any law enforcement officer employed by a local police department or sheriff's office, consistent with Section 830.1.

(d) "Victim" means a person who is a victim of domestic violence.

13701. Every law enforcement agency in the this state shall develop, adopt, and implement written policies and standards for officers' response to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as

any other request for assistance where violence has occurred. These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

- (a) Felony arrests.
- (b) Misdemeanor arrests.
- (c) Use of citizen arrests.
- (d) Verification and enforcement of temporary restraining orders when (1) the suspect is present and (2) when the suspect has fled.
- (e) Verification and enforcement of stay-away orders.
- (f) Cite and release policies.
- (g) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.
- (h) Writing of reports.
- (i) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

In the development of these policies, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

#### CHAPTER 2. RESTRAINING ORDERS

13710. Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

#### CHAPTER 3. STAY-AWAY ORDERS

13720. A stay-away order may be issued by the court in a criminal case involving domestic violence where, with notice to the defendant and upon an affidavit, a likelihood of harassment of the victim by the defendant has been demonstrated to the satisfaction of the court. Such an order may remain in effect as long as the suspect is under the court's jurisdiction, including any sentence or probationary period.

#### CHAPTER 4. DATA COLLECTION

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are

involved. Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public, the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

#### CHAPTER 5. TERMINATION

13731. This title shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 4. The sum of twenty-five thousand dollars (\$25,000) is hereby appropriated from the General Fund to the Department of Justice for the purposes of Section 13730 of the Penal Code.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

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**Assembly Bill No. 1599**

**CHAPTER 758**

An act to amend Section 546 of the Code of Civil Procedure, relating to court orders.

[Approved by Governor September 18, 1987. Filed with  
Secretary of State September 18, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1599, Speier. Restraining orders: domestic violence.

Existing law authorizes the issuance of restraining orders against domestic violence, as specified.

This bill, operative July 1, 1988, would require the designation by the presiding judge of the superior court of at least one judge, commissioner, or referee in each county to be available, as specified, to orally issue, by telephone or otherwise, emergency protective orders against domestic violence, as specified, which would be authorized to be issued at all times when the court is not in session. Because it would impose new duties on police and sheriffs' officers, including reducing the orders to writing, it would establish a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$500,000, shall be made from the State Mandates Claims Fund.

*The people of the State of California do enact as follows:*

SECTION 1. Section 546 of the Code of Civil Procedure is amended to read:

546. (a) The court may issue ex parte any of the orders set forth in subdivision (a) of Section 4359 of the Civil Code, or in the case of a nonmarital relationship between the plaintiff and the defendant any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code and where there is a minor child of the plaintiff and the defendant an order determining the temporary custody of the child. In the case in which a temporary restraining order is granted without notice, the matter shall be made

returnable on an order requiring cause to be shown why the order should not be dissolved, on the earliest day that the business of the court will permit, but not later than 20 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted. The court may on motion of the plaintiff or on its own motion shorten the time for service on the defendant of the order to show cause.

The court may issue an ex parte order pursuant to this subdivision, excluding one party from a residence or dwelling only when the affidavit in support of an application for the order affirmatively shows facts sufficient for the court to ascertain that the plaintiff has a right under color of law to possession of the premises.

(b) The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session. A judge, commissioner, or referee so designated may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence by a family or household member, based upon the person's allegation of a recent incident of abuse or threat of abuse by that family or household member. The order may consist of any of the orders set forth in paragraphs (2), (3), and (6) of subdivision (a) of Section 4359 of the Civil Code, as well as an order determining the temporary care and control of any minor children of the endangered person and the person against whom the order is sought. The order shall be issued without prejudice to any party.

A judge, commissioner, or referee may issue an emergency protective order pursuant to this subdivision only upon a finding that reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists and that an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence. The police or sheriff's officer requesting the order shall reduce it to writing, and shall sign the order. The order shall include all of the following:

- (1) A statement of the grounds asserted for the order.
- (2) The date and time the order expires.
- (3) The address of the superior court for the district or county in which the endangered person resides.
- (4) The following statement: "To the Protected Party: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above, when it opens. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that he or she may assist you in making your application. To the Restrained Party: This order will last until the

date noted above. The protected party may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application.”

The Judicial Council shall prescribe the form of the order and any other documents required by this subdivision. The statement required in paragraph (4) shall be printed in English and Spanish.

The officer who requested the emergency protective order, while on duty, shall carry copies of the order.

The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance.

An emergency protective order shall expire not later than the close of judicial business on the next day of judicial business following the day of its issue.

The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse.

A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 3. This act shall become operative on July 1, 1988.

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**Assembly Bill No. 416**

**CHAPTER 1362**

An act to amend Section 12028.5 of the Penal Code, relating to weapons.

[Approved by Governor September 29, 1987. Filed with  
Secretary of State September 29, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

AB 416, Mojonnier. Domestic violence: seizure of firearms.

Existing law provides that a sheriff, undersheriff, deputy sheriff, police officer of a city, or police officer member of a University of California Police Department, or member of a California State University Police Department, who is at the scene of an incident of domestic violence, as defined, involving a threat to human life or a physical assault, may temporarily take custody of any firearm, as defined, in plain sight or discovered pursuant to a consensual search and is required to give the owner or possessor a receipt therefor. Existing law also provides for the return of firearms to their owners and for the sale and destruction of firearms under specified circumstances and in accordance with specified procedures.

This bill would add marshals and deputy marshals to the list of peace officers authorized to take custody of firearms at the scene of an incident of domestic violence and make a related, conforming, change as to the sale and destruction of those firearms.

The bill would also provide for attorney's fees in civil actions and proceedings for the return of firearms or ammunition seized by a state or local law enforcement agency and not returned within 72 hours.

This bill would impose upon a state-mandated local program by imposing new duties on local officials with respect to the seizure of weapons in domestic violence cases.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

This bill would incorporate additional changes in Section 12028.5 of the Penal Code, proposed by AB 798, to be operative only if both

bills are chaptered and this bill is chaptered last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following words have the following meanings:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Domestic violence" is abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (d) of Section 830.2, and a member of a California State University Police Department, as defined in subdivision (e) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm described in Section 12001 in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours. If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition seized by any state or local law enforcement agency and not returned within 72 hours, the court shall allow reasonable attorney's fees, not to exceed one thousand dollars (\$1,000), to the prevailing party.

(c) Any firearm which has been taken into custody which has been stolen shall be restored to the lawful owner, as soon as its use

for evidence has been served, upon his or her identification of the firearm and proof of ownership.

(d) Any firearm taken into custody and held by a police, university police, or sheriff's department, or by a marshal's office, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028.

SEC. 2. Section 12028.5 of the Penal Code is amended to read:

12028.5. (a) As used in this section, the following words have the following meanings:

(1) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) "Domestic violence" is abuse perpetrated against a family or household member.

(3) "Family or household member" means a spouse, former spouse, parent, child, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the last six months, regularly resided in the household.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a member of the University of California Police Department, as defined in subdivision (d) of Section 830.2, and a member of a California State University Police Department, as defined in subdivision (e) of Section 830.2, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, may take temporary custody of any firearm in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours. If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition seized by any state or local law enforcement agency and not returned within 72 hours, the court shall allow reasonable attorney's fees, not to exceed one thousand dollars (\$1,000), to the prevailing party.

(c) Any firearm which has been taken into custody which has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm and proof of ownership.

(d) Any firearm taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028.

SEC. 3. Section 2 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and AB 798. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1988, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after AB 798, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

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PERSON TO BE PROTECTED <i>(name)</i> :	INCIDENT CASE NUMBER:
PERSON TO BE RESTRAINED <i>(name)</i> :	COURT CASE NUMBER, IF ANY:

**APPLICATION FOR EMERGENCY PROTECTIVE ORDER**

*(Use this form only if the person to be restrained is a family or household member.)*

1. Is the person to be restrained a family or household member?  Yes  No  
If the answer is NO, an emergency protective order is not available.

2. Describe the events that cause you to fear you are in immediate and present danger of domestic violence. Give facts showing abuse or threats of abuse and the dates they occurred. Specify any weapons.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. What is your residence address? \_\_\_\_\_

4. Does the person to be restrained live at your residence?  Yes  No

5. Do you want me to ask the court to order the restrained person to move out immediately?  Yes  No

6. Do you and the restrained person have minor children from your relationship living with you?  Yes  No

7. Is there any order about the children's custody now?  Yes  No

8. Do you want me to ask the court to give you temporary custody of the children?  Yes  No

9. Why do you need a custody order? Give facts and events with dates they occurred.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Do you understand any emergency protective order will expire at 5 p.m. on *(date)*: \_\_\_\_\_  Yes  No

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

11. \_\_\_\_\_  
(PRINT NAME OF PROTECTED PERSON)

\_\_\_\_\_  
(SIGNATURE OF PROTECTED PERSON)

12.  Phone call to *(name of judicial officer)*: \_\_\_\_\_ on *(date)*: \_\_\_\_\_  
at *(time)*: \_\_\_\_\_

a. Emergency Protective Order  is granted  is denied.

b. By \_\_\_\_\_  
(PRINT NAME OF LAW ENFORCEMENT OFFICER)

\_\_\_\_\_  
(SIGNATURE OF LAW ENFORCEMENT OFFICER)



<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i>
PROTECTED PERSON (NAME):	
RESTRAINED PERSON (NAME):	
<b>EMERGENCY PROTECTIVE ORDER</b>	COURT CASE NUMBER:

1. THIS EMERGENCY PROTECTIVE ORDER WILL EXPIRE AT 5 P.M. ON:   
(INSERT DATE OF NEXT COURT DAY)
2. Reasonable grounds appear that an immediate danger of domestic violence exists and this order should be issued
  - a. AGAINST RESTRAINED PERSON (*name*): \_\_\_\_\_
  - b. WHO must not contact, molest, attack, strike, threaten, sexually assault, batter, telephone, or otherwise harass or disturb the peace of the protected person
    - (1)  or the peace of the following family or household members (*names*): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  - c.  WHO must stay away from the protected person at least (*yards*): \_\_\_\_\_
  - d.  WHO must move out and not return to the residence at (*address*): \_\_\_\_\_
3.  Temporary custody of the following minor children is given to the protected person:  
 Children (*names and ages*): \_\_\_\_\_  
 \_\_\_\_\_
4.  The protected person has been given a copy of this order, the application, and instructions about how to get a more permanent order.
5. Date:
6. Law Enforcement Officer: \_\_\_\_\_ ▶ \_\_\_\_\_  
(PRINT NAME) (SIGNATURE)
  - a. Badge No.: \_\_\_\_\_
  - b. Incident Case No.: \_\_\_\_\_
  - c. Agency: \_\_\_\_\_
  - d. Telephone No.: \_\_\_\_\_
7. Service of this order and application on the restrained person was completed as follows:
 

	Date	Time	Signature
a. <input type="checkbox"/> I orally advised person of contents:	_____	_____	_____
b. <input type="checkbox"/> I personally gave person copies:	_____	_____	_____

DESCRIPTION OF RESTRAINED PERSON (fill out what you know)		
(1) approximate age: _____	(4) weight: _____	(7) vehicle make: _____
(2) race: _____	(5) hair color: _____	(8) vehicle model: _____
(3) height: _____	(6) eye color: _____	(9) vehicle license No.: _____
(10) other distinguishing features: _____		

**VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1000 FINE, SIX MONTHS IN JAIL, OR BOTH. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA.**

*(See reverse for important notices)*

# EMERGENCY PROTECTIVE ORDER

## WARNINGS AND INFORMATION

**To the Restrained Person:** This order will last until the date in item 1 on the reverse. The protected person may, however, obtain a more permanent restraining order when the court opens. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that he or she may assist you in responding to the application.

**A la Persona bajo Restricción:** Esta orden durará hasta la fecha indicada en el punto 1 al reverso. La persona protegida puede, sin embargo, obtener una orden de restricción (interdicto) más permanente cuando la corte abra. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta solicitud. El abogado debe ser consultado sin pérdida de tiempo para que él o ella le pueda ayudar a responder a la solicitud.

**To the Protected Person:** This order will last only until the date and time noted in item 1 on the reverse. If you wish to seek continuing protection, you will have to apply for an order from the court at the address on the reverse, when it opens, or you should apply to the court in the county where you live if it is a different county and the violence is likely to occur there. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that he or she may assist you in making your application. But you do not have to have an attorney to get the protective order, and there is no charge for the order.

**A la Persona bajo Protección:** Esta orden durará sólo hasta la fecha y hora indicadas en el punto 1 al reverso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada al reverso cuando la corte abra, o deberá hacer la solicitud ante la corte del condado donde usted vive, si se trata de un condado diferente y es probable que la violencia ocurra allí. Usted puede consultar a un abogado en conexión con su solicitud para cualesquiera órdenes futuras de la corte. El abogado debe ser consultado sin pérdida de tiempo para que él o ella le pueda ayudar a hacer la solicitud. No es necesario, sin embargo, que un abogado le represente para obtener la orden protectora. Además, esta orden es gratis.

*Code of Civil Procedure section 546(b) provides, in part, "The presiding judge of the superior court in each county shall designate not less than one judge, commissioner, or referee to be reasonably available to orally issue, by telephone or otherwise, emergency protective orders at all times when the superior court is not in session. A judge, commissioner, or referee so designated may issue an ex parte emergency protective order when a police or sheriff's officer asserts reasonable grounds to believe that a person is in immediate and present danger of domestic violence by a family or household member, based upon the person's allegation of a recent incident of abuse or threat of abuse by that family or household member. . . . The police or sheriff's officer requesting the order shall reduce it to writing, and shall sign the order. . . . The officer who requested the emergency protective order, while on duty, shall carry copies of the order.*

*The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance. An emergency protective order shall expire not later than the close of judicial business on the next day of judicial business following the day of its issue. The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse. A police or sheriff's officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A police or sheriff's officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto."*