



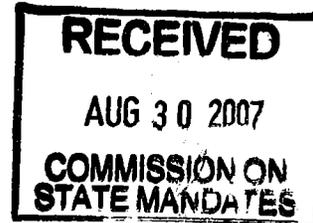
DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

August 28, 2007

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



Dear Ms. Higashi:

As requested in your letter of August 6, 2007, the Department of Finance (Finance) has reviewed the draft staff analysis of Claim No. 02-TC-18, "Crime Victims, Domestic Violence Incident Reports II."

Finance concurs in part with the draft staff analysis to partially approve the test claim. Finance asserts the following objections:

Penal Code section 13730

The draft staff analysis relating to the amendment to Penal Code section 13730(c)(3), (Stats. 2001, ch. 483) is inconsistent with the Commission's February 26, 1998, decision in CSM-96-362-01. In that decision, the Commission 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 declined to find that the domestic violence incident report form was required because subdivision (c) is suspended and subdivision (a) does nothing except clarify subdivision (c). The same is true here. The draft staff analysis improperly relies on the existence of subdivision (a) to find the domestic violence incident report form is a requirement.

It is undisputed that subdivision (c) of section 13730 is optional because of its suspension by the Legislature. Like the 1995 amendment to subdivision (c), which the Commission found optional in CSM-96-362-01, the 2001 amendment to subdivision (c) at issue here is also optional. Both amendments were aimed at specifying the minimum content of the report with additional "notations"—a fact the Commission found compelling in CSM-96-362-01. The Commission also found compelling the fact that the requirements imposed by the 1995 amendment to subdivision (c) were not independent of the incident report, but rather were "encompassed and directly connected to the underlying incident reporting program" which was optional due to suspension. The same is true for the 2001 amendment at issue here.

In sum, the Commission should conclude in this claim as it did in CSM-96-362-01, that "since the development and completion of the incident report are not state mandated, then the new information to be included on the incident report is likewise not state mandated."

Penal Code section 12028.5

Subdivision (j). Subdivision (i), by its express language, confers discretion on the law enforcement agency. There is no requirement that the law enforcement agency file a petition for an order of default. The language of the section states in part, "...if the person does not request a hearing or does not respond within 30 days of receipt of the notice, the local law enforcement agency may file a petition for an order of default..." (Emphasis added). If no default petition is filed, after 12 months the weapons are disposed pursuant to subdivision (e).

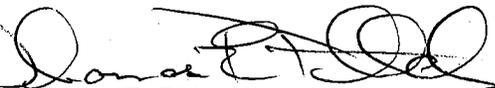
Subdivision (f). As noted in the draft staff analysis, subdivision (f) does not require a new activity of a law enforcement agency, and in fact allows the law enforcement agency *more* time than did preexisting law to initiate a petition in court to determine if a weapon should be returned. Additionally, the language is permissive. The section states in part, "[t]he law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition." (Emphasis added).

Accordingly, no reimbursable state mandate exists for the activities described above.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your August 6, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

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

Sincerely,



Thomas E. Dithridge
Program Budget Manager

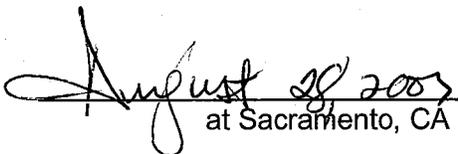
Attachments

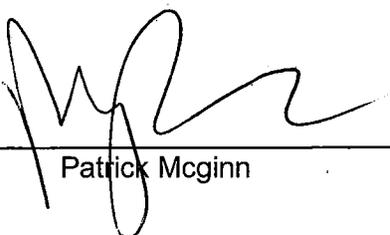
Attachment A

DECLARATION OF PATRICK MCGINN
DEPARTMENT OF FINANCE
CLAIM NO. 02-TC-18

1. 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.


at Sacramento, CA


Patrick McGinn

PROOF OF SERVICE

Test Claim Name: Crime Victims, Domestic Violence Incident Reports II
Test Claim Number: 02-TC-18

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On August 28, 2007, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

B-08
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State Controller's Office
Division of Accounting & Reporting
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A-15
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A-16
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County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
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Steve Shields
Shields Consulting Group, Inc.
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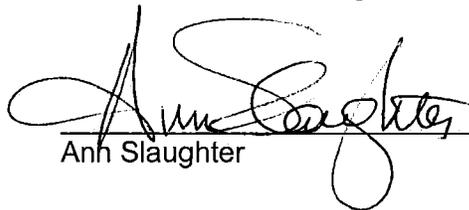
Mark Sigman
Riverside County Sheriff's Office
4095 Lemon Street
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Bonnie Ter Keurst
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Office of the Auditor/Controller-Recorder
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Sacramento, CA 95826

B-08
Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

On 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 August 28, 2007 at Sacramento, California.


Ann Slaughter