

**ITEM 9**

**TEST CLAIM  
FINAL STAFF ANALYSIS**

Penal Code Sections 264.2, 13519 and 13701  
Statutes 1998, Chapters 698, 701 and 702

*Domestic Violence Arrests and Victim Assistance*  
(98-TC-14)

County of Los Angeles, Claimant

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## ITEM 9

### TEST CLAIM FINAL STAFF ANALYSIS

Penal Code Sections 264.2, 13519 and 13701  
Statutes 1998, Chapters 698, 701 and 702

#### *Domestic Violence Arrests and Victim Assistance (98-TC-14)*

County of Los Angeles, Claimant

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### EXECUTIVE SUMMARY

Penal Code section 264.2 requires law enforcement officers who investigate and assist victims of specified sex crimes to, among other things, give the victim a Victim of Domestic Violence card (victim card). The test claim statute (Stats. 1998, ch. 698) amends section 264.2 to add two crimes for which a victim card is given: victims of spousal battery, and victims of corporal injury on a spouse or other specified victim. Section 13519<sup>1</sup> requires the Commission on Peace Officer Standards and Training (POST) to implement a domestic violence training course and response guidelines with specified content. Section 13519 was amended (by Stats. 1998, ch. 701) to add subdivision (c)(5), "[t]he signs of domestic violence" to the course content and response guidelines.

Statutes 1998, chapter 702 amends section 13701, law enforcement's domestic violence policy, to add: (1) transportation to a hospital and safe passage out of the victim's residence, and (2) contact information for the California victims' compensation program. It also adds two provisions to the content of the victim card: (1) phone numbers or county hotlines for local battered-women shelters, and (2) a statement that domestic violence or assault by a person known to the victim, including domestic violence or assault by the victim's spouse, is a crime. This test claim statute also amends subdivision (b) of section 13701 by adding orders issued by other states, tribes or territories to the list of enforceable protective orders in the domestic violence arrest policy.

The Commission on State Mandates (Commission) has issued five decisions on prior versions of these test claim statutes within the past 17 years, as explained in the analysis.

For reasons stated in the analysis, staff finds that section 13701, subdivision (c)(9)(D) and (H) (as amended by Stats. 1998, ch. 702), and section 264.2, subdivision (a) (as amended by Stats. 1998, ch. 698), impose a reimbursable state-mandated program on local agencies within the meaning of

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise indicated.

section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Providing victim cards to victims of the following crimes: (1) Penal Code section 243, subdivision (e), battery against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship;<sup>2</sup> and (2) Penal Code section 273.5, willful infliction of corporal injury on a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.<sup>3</sup> (§ 264.2, subd. (a)).
- The one-time cost of printing victim cards to add the following new information: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).
- The one-time cost of adding to the domestic violence response policy two new crimes (§§ 243, subd. (e), & 273.5) to those for which a victim card is given out (§ 13701, subd. (c)(9)(H)).
- The one-time cost of adding the following to the description of the victim card in the domestic violence response policy: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).

Staff also finds that all other amendments to the test claim statutes, as discussed above, do not constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

### **Recommendation**

Staff recommends that the Commission partially approve this test claim and adopt this analysis.

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<sup>2</sup> Penal Code section 243, subdivision (e).

<sup>3</sup> Penal Code section 273.5.

## STAFF ANALYSIS

### Claimant

County of Los Angeles

### Chronology

- 05/21/99 Claimant files test claim with the Commission
- 06/28/99 Department of Finance (DOF) files comments on test claim with the Commission
- 01/11/01 Claimant requests an extension to file a reply to DOF's comments until 30 days after the California Supreme Court's decision in *Carmel Valley Fire Protection District v. State of California* (2001) 25 Cal. 4th 287 (*Carmel Valley II*)<sup>4</sup>
- 01/16/01 Commission staff grants claimant's request for an extension
- 04/05/01 The California Supreme Court issues the *Carmel Valley II* decision
- 05/03/01 Claimant files response to DOF's comments
- 04/09/02 Commission staff, claimant, and DOF stipulate to stay proceedings until judicial determination of *County of Los Angeles v. Commission on State Mandates*
- 07/28/03 Decision issued in *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176
- 11/26/03 Commission staff issues draft staff analysis
- 12/22/03 Claimant files test claim amendment, accepted by Commission staff as timely filed.
- 10/15/04 Commission staff issues revised draft staff analysis
- 11/05/04 Claimant files comments on the revised draft staff analysis
- 11/19/04 Commission staff issues final staff analysis and Proposed Statement of Decision

### Background

#### A. Test Claim Legislation

In 1998, the Legislature enacted the test claim legislation to amend three Penal Code sections that address domestic violence. Section 264.2<sup>5</sup> requires law enforcement officers who investigate and assist victims of specified sex crimes to, among other things, give the victim a victim card. The test claim statute adds two crimes for which a victim card is given. The new groups to receive a card are victims of spousal battery, and victims of corporal injury on a spouse or other specified victim.

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<sup>4</sup> J. Tyler McCauley, County of Los Angeles, letter to Paula Higashi, January 11, 2001.

<sup>5</sup> Section 264.2 was amended by Statutes 1998, chapter 698 (see §§ 1.5 & 4 of ch. 698).



Section 13519<sup>6</sup> requires the Commission on Peace Officer Standards and Training (POST) to implement a domestic violence basic training course and response guidelines with content as specified.<sup>7</sup> The test claim statute adds subdivision (c)(5), “[t]he signs of domestic violence” to the course content and response guidelines. Section 13519, subdivision (e), also requires supplementary training as prescribed and certified by POST. Subdivision (g) requires nonsupervisory officers who are “assigned to patrol duties and would normally respond to domestic violence calls”<sup>8</sup> to complete, every two years, an updated domestic violence course that includes the specified content of the response guidelines and basic training course.

Section 13701,<sup>9</sup> which contains the policies and standards for officers’ responses to domestic violence calls, was amended by Statutes 1998, chapter 702.<sup>10</sup> Chapter 702 amends the policies and standards for assisting domestic violence victims at the scene and the information given to the victim. Specifically, it adds to law enforcement’s domestic violence policy: (1) transportation to a hospital and safe passage out of the victim’s residence, and (2) contact information for the California victims’ compensation program. It also adds two provisions to the content of the victim card: (1) phone numbers or county hotlines for local battered-women shelters, and (2) a statement that domestic violence or assault by a person known to the victim, including domestic violence or assault by the victim’s spouse, is a crime. Further, the test claim statute amends subdivision (b) of section 13701 by adding orders issued by other states, tribes or territories to the list of enforceable protective orders in the domestic violence arrest policy.

#### B. Prior Related Commission Decisions

The Commission has issued five decisions on prior versions of these test claim statutes within the past 17 years, as follows.

##### **1. Penal Code section 13519 – Domestic Violence Training**

**Domestic Violence Training test claim:** In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course in how to handle domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376).<sup>11</sup> The Commission found that the test claim legislation: (1) does not require local agencies to implement a domestic violence training program and to pay the cost of the training; (2) does not increase the minimum number of basic training hours, nor the

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<sup>6</sup> Section 13519 was amended by Statutes 1998, chapter 701.

<sup>7</sup> See <[http://www.post.ca.gov/training/tps\\_bureau/domestic\\_violence/domestic-violence-manual\\_wv.pdf](http://www.post.ca.gov/training/tps_bureau/domestic_violence/domestic-violence-manual_wv.pdf)> (as of September 24, 2004); attached in Exhibit F.

<sup>8</sup> Penal Code section 13519, subdivision (g).

<sup>9</sup> Section 13701 was amended by Statutes 1998, chapter 702 (§§ 3.3 & 6, subd. (c)).

<sup>10</sup> Claimant originally pled Statutes 1998, chapters 698 and 701, but amended the test claim to add Statutes 1998, chapter 702.

<sup>11</sup> Penal Code section 13519, subdivisions (b) and (c) (Stats. 1984, ch. 1609).

minimum number of advanced officer training hours, so no additional costs are incurred by local agencies; and (3) does not require local agencies to provide domestic violence training.

**Domestic Violence Training and Incident Reporting test claim:** In 1998, the Commission decided the *Domestic Violence Training and Incident Reporting* test claim (96-362-01), finding that Penal Code section 13519, subdivision (e)<sup>12</sup> (amended by Stats. 1995, ch. 965) is not a reimbursable state-mandated program. This statute requires local law enforcement officers below the rank of supervisor who normally respond to domestic violence calls to complete an updated domestic violence course every two years. The Commission found that because law enforcement officers are already required to take 24 hours of continuing education every two years, requiring the two-hour course as part of the 24-hour requirement does not impose increased costs mandated by the state.

The Commission's decision was upheld by the Second District Court of Appeal in *County of Los Angeles v. California Department of Finance*, holding that the statute did not impose a reimbursable state-mandated program because it merely "directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training."<sup>13</sup>

## 2. Penal Code section 13701 – Domestic Violence Response and Arrest Policies

**Domestic Violence test claim [response policies]:** In 1987, the Commission adopted the *Domestic Violence* Statement of Decision (CSM-4222), finding that the test claim statutes<sup>14</sup> are state-mandated programs that require local law enforcement agencies to: "develop, adopt and implement policies and standards for officer's responses to domestic violence calls; ... [maintain] records and recording systems, and ... [provide] specific written information ... to victims of domestic violence." The Commission's parameters and guidelines allowed reimbursement for, among other things: (1) development, adoption and implementation of a domestic violence policy; (2) preparing a statement of information for incidents of domestic violence and giving it to victims (not including the victim card<sup>15</sup>); and (3) reporting to the Attorney General. Furnishing the victim with written information when responding to domestic violence incidents is also reimbursable.

Except for the 2003-2004 fiscal year, however, the Legislature has suspended these activities (the *Domestic Violence* mandate, Stats. 1984, ch. 1609) every year since the current test claim statute's operative date (January 1, 1999) based on authority in Government Code section 17581.<sup>16</sup>

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<sup>12</sup> This is currently section 13519, subdivision (g) as amended by Statutes 1998, chapter 701.

<sup>13</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.

<sup>14</sup> Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 (Pen. Code, §§ 13700-13731).

<sup>15</sup> The victim card provision was added in 1991, which the Commission found reimbursable in the *Rape Victims Counseling Center Notice* test claim, CSM-4426 (1993), attached in Exhibit E.

<sup>16</sup> Except for the 2003-2004 budget (Stats. 2003, ch. 157), Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 have been suspended by the Legislature pursuant to Government Code section 17581 every year since the operative date of the current test claim statutes

**Domestic Violence Arrest Policies and Standards test claim:** In 1997, the Commission adopted the *Domestic Violence Arrest Policies and Standards* Statement of Decision (96-362-02), finding that Penal Code section 13701, (as amended by Stats. 1995, ch. 246) constitutes a reimbursable state-mandated program for development, adoption, and implementation of domestic violence arrest procedures.<sup>17</sup> The Commission distinguished between the domestic violence *response* procedures in the suspended statute discussed above, and domestic violence *arrest* procedures in the amended test claim statute (now § 13701, subd. (b)), and concluded that the arrest procedures are not part of the legislative suspension of the response policy.

### 3. Penal Code section 264.2 – Victim Card Distribution

**Rape Victims Counseling Center Notice test claim:** In 1993, the Commission adopted the *Rape Victims Counseling Center Notice* Statement of Decision (CSM-4426), finding that Statutes 1991, chapter 999 and Statutes 1992, chapter 224 (Pen. Code, § 264.2, subds. (b)(1) & (b)(2), & Pen. Code, § 13701) is a state-mandated program. The parameters and guidelines list the following reimbursable activities:

[R]equiring local law enforcement agencies to notify the local rape victim counseling center when the victim is transported to a hospital for examination and the victim approves of that notification; subject to the approval of the victim and upon request from the treating hospital, to verify whether the local rape victim counseling center has been notified; to revise the “Victims of Domestic Violence” card by adding information to assist rape victims, and to furnish a rape victim with a “Victims of Domestic Violence” card.

#### Claimant’s Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section

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(January 1, 1999) as follows: Statutes 1998, chapter 282, Item 9210-295-001, Schedule (8), Provision 2; Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3. The Legislature did not suspend in 2003-2004, as of August 2, 2003, the date the 2003-2004 budget was enacted. It was suspended again in the 2004-2005 budget: Statutes 2004, chapter 208, Item 9210-295-0001, Schedule (3), Provision 5.

<sup>17</sup> This mandate (Stats. 1995, ch. 246) currently has \$1000 in the 2004-05 budget: Statutes 2004, chapter 208, Item 8120-102-0268, Schedule (1). The parameters and guidelines for this claim identify a uniform cost allowance as follows: A standard time of twenty-nine (29) minutes may be claimed to identify the primary aggressor in any domestic violence incident. The standard time of twenty-nine (29) minutes is broken down as follows: Seventeen (17) Minutes – Interview of both parties. Twelve (12) Minutes – Consideration of the factors listed [in the reimbursable activities]. The total cost will be determined by multiplying the number of reported responses x the average productive hourly rate, including applicable indirect costs as specified in section V., paragraph B, herein, x .48 (29 minutes divided by 60 minutes).

17514. Claimant requests reimbursement for the costs of providing victim cards to new groups of victims, giving additional written information to victims, giving victims additional emergency assistance, training officers, updating policies and procedures and modifying record-keeping systems.

Claimant amended the test claim in December 2003 to add Statutes 1998, chapter 702, but pled the same activities as in the original test claim. The Commission accepted the amendment as filed in a timely manner. Claimant concurred with the draft staff analysis, as noted below.

### **State Agency Position**

The Department of Finance (DOF) comments regarding Statutes 1998, chapter 698, that "these provisions would appear to result in a reimbursable state-mandated local program ...." (Chapter 698 added two new groups of victims to those who receive a victim card). But DOF notes that the Legislature has suspended the mandates imposed by Statutes 1984, chapter 1609 relating to law enforcement responses to domestic violence, and argues that this includes the provisions of section 13701 requiring distribution of a victim card. According to DOF, "until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at issue in the present matter would similarly not be reimbursable."

Regarding Statutes 1998, chapter 701, DOF states that requiring the domestic violence training course for law enforcement officers to include techniques for recognizing the signs of domestic violence would be satisfied by POST. As to the rest of chapter 701 (responding to domestic violence calls to include emergency assistance to the victim's children, transportation of the domestic violence victim and children to a hospital for treatment if necessary, and police assistance in safe passage out of the victim's residence), DOF believes "that these provisions may result in a reimbursable state-mandated local program." However, based on the Legislature's suspension of Statutes 1984, chapter 1609, DOF believes "any provision of Chapter 701/98 at issue ... would not be reimbursable."

No other state agencies commented on the test claim, nor on the amendment.

### **Discussion**

The courts have found that article XIII B, section 6 of the California Constitution<sup>18</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>19</sup> "Its purpose

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<sup>18</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides:

- (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1,

is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>20</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>21</sup> In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.<sup>22</sup>

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>23</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>24</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>25</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>26</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>27</sup> In making its

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1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>19</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>20</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>21</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>22</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>23</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

<sup>24</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>25</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>26</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>27</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>28</sup>

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?
- Does the Commission have jurisdiction over activities decided in a prior test claim?
- If the Commission finds a reimbursable state-mandate in the test claim statute(s), does article XIII B, section 6, subdivision (b)(5), apply to this test claim?

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

**A. Do the test claim statutes impose state-mandated activities on local agencies?**

**Domestic violence arrest policy (§ 13701, subd. (b)):** Statutes 1998, chapter 702 amended section 13701, subdivision (b),<sup>29</sup> by adding orders issued by other states, tribes or territories to the list of enforceable protective orders in the domestic violence arrest policy. The test claim statute amended the preexisting law as follows:

These [domestic violence arrest] policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated.

Local law enforcement agencies must now amend their domestic violence arrest policies to include these orders issued by other jurisdictions. Staff finds this amendment is not a state mandate because it is incidental to a requirement of federal law.

The legislative history of this amendment clearly indicates that it was enacted to bring California into compliance with the federal Violence Against Women Act (18 U.S.C. § 2265), which requires

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<sup>28</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>29</sup> This subdivision was added by Statutes 1995, chapter 246, which the Commission found is reimbursable in the *Domestic Violence Arrest Policies and Standards*, 96-362-02 (1996) test claim (in Exhibit E).

any protective order issued by a court of one state or Indian tribe to be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or Indian tribe.<sup>30</sup>

In *San Diego Unified School District v. Commission on State Mandates*,<sup>31</sup> the California Supreme Court considered whether the pupil expulsion hearing procedures of Education Code section 48918 are reimbursable. The court held that this Education Code provision was adopted to implement a federal due process mandate, so the hearing costs were not reimbursable.<sup>32</sup> In doing so, the court espoused the following rule:

[F]or purposes of ruling upon a request for reimbursement, challenged state rules or procedures [i.e., test claim statutes] that are intended to implement an applicable federal law -- and whose costs are, in context, de minimis -- should be treated as part and parcel of the underlying federal mandate.<sup>33</sup>

The reasoning of the *San Diego Unified* case applies to this claim because the amendment in the test claim statute was intended to implement a federal law (the Violence Against Women Act) and contains a de minimis, one-time cost (inserting a phrase in the domestic violence arrest policy).

Thus, staff finds that the amendment to section 13701, subdivision (b), in Statutes 1998, chapter 702 does not impose a state-mandated activity on local agencies because it is "part and parcel of the underlying federal mandate."<sup>34</sup>

**Excluding the support person (Pen. Code, § 264.2, subd. (b)(4)):** Section 1.5 of Statutes 1998, chapter 698 adds subdivision (b)(4) to section 264.2 regarding sex-crime victims:

A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

Preexisting law gives the victim of specified sex crimes<sup>35</sup> the right to have a support person present during any medical evidentiary or physical examination.

Staff finds that subdivision (b)(4) does not impose a state-mandated activity on local agencies. The statute's use of the word "may" makes this activity at the officer's discretion.<sup>36</sup> Therefore, Penal Code section 264.2, subdivision (b)(4), is not subject to article XIII B, section 6.<sup>37</sup>

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<sup>30</sup> Senate Judiciary Committee analysis, Assembly Bill No. 2177 (1997-1998 Reg. Sess.) as amended March 26, 1998, page 1 (in Exhibit F).

<sup>31</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

<sup>32</sup> *Id.* at page 888.

<sup>33</sup> *Id.* at page 890.

<sup>34</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 890.

<sup>35</sup> These include rape (§ 261) statutory rape (§ 261.5), spousal rape (§ 262), sodomy (§ 286), oral copulation (§ 288a), and forcible acts of sexual penetration (§ 289).

**Basic training (§ 13519, subd. (c)(5)):** Section 13519 requires POST to implement a course for training law enforcement officers in handling domestic violence complaints and developing guidelines for response to domestic violence. Section 1 of the test claim statute (Stats. 1998, ch. 701) amended subdivision (c)(5), to add "signs of domestic violence" to the list of basic training procedures and techniques.

In 1991, the Commission, in the *Domestic Violence Training* decision, CSM-4376 (1991), found that the basic training procedures and techniques of section 13519, subdivision (c), are not mandatory because the test claim legislation: (1) does not require local agencies to implement a domestic violence training program and to pay the cost of the training; (2) does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours, so no additional costs are incurred by local agencies; and (3) does not require local agencies to provide domestic violence training.<sup>38</sup> The same analysis applies to this test claim.

Staff finds that the statutory amendment pled by claimant does not mandate basic training activities on local law enforcement agencies because the requirement to implement the domestic violence course is on POST, a state agency. Moreover, the requirement to complete the basic training course on domestic violence is mandated only on the individual seeking peace officer status.

Subdivision (c) of section 13519 states that "the course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the [domestic violence] procedures and techniques described below: ...." The test claim statute does not mandate local agencies to provide the course of basic training, nor does it specify who is required to provide it.

In addition, there are no provisions in other statutes or regulations issued by POST that require local agencies to provide basic training to recruits. Since 1959, section 13510 and following have required POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing recruitment of new local law enforcement officers.<sup>39</sup> Recruits may obtain the required training at any institution approved by POST.<sup>40</sup> Moreover, "each applicant for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency . . . shall be required to submit written certification from the Department of Justice . . . that the applicant has no criminal history background. . . ." <sup>41</sup>

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<sup>36</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

<sup>37</sup> Alternatively, because claimant pled no activities related to subdivision (b)(4), there is no evidence in the record that excluding the support person imposes costs mandated by the state.

<sup>38</sup> This finding is consistent with the Commission's decision in *Law Enforcement Racial and Cultural Diversity Training* 97-TC-06 (2000).

<sup>39</sup> These standards are found in Title 11 of the California Code of Regulations.

<sup>40</sup> Penal Code section 13511, subdivision (a).

<sup>41</sup> Penal Code section 13511.5.



Since 1971, section 832 has required “every person described in this chapter as a peace officer” to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.<sup>42</sup> Subdivision (e)(1) requires any person completing the basic training course “who does not become employed as a peace officer” within three years to pass the basic training examination. POST may charge a fee for the basic training examination to each “applicant” who is not sponsored or employed by a local law enforcement agency.<sup>43</sup>

Because the test claim statute does not mandate local agencies to incur costs to provide basic training, including the domestic violence course, staff finds that section 13519 (as amended by Stats. 1998, ch. 701), as it applies to basic training, does not impose a state-mandated activity on local agencies.

**Continuing training (§ 13519, subd. (c)(5)):** As discussed above, the test claim statute (Stats. 1998, ch. 701) amended subdivision (c)(5), to add “signs of domestic violence” to the list of basic training procedures and techniques. Subdivision (g), the continuing training provision, requires specified peace officers to take the domestic violence course every two years “that is developed according to the standards and guidelines developed pursuant to subdivision (d).” Subdivision (d) states: “The guidelines developed by the commission [POST] shall also incorporate the foregoing factors.” These foregoing factors are listed in subdivision (c), the subdivision that was amended by the test claim statute to include the “signs of domestic violence” to the course content. Thus, the test claim amendment to subdivision (c) also affects continuing training.

The Commission found that the domestic violence continuing education requirement of section 13519 is not a reimbursable mandate in the *Domestic Violence Training and Incident Reporting* decision, 96-362-01 (1996). This test claim was litigated and the decision upheld by the court in *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176. But the court stated that POST certification for continuing education “is, for all practical purposes, not a ‘voluntary’ program and therefore the County must, in order to comply with section 13519, add domestic violence training to its curriculum.” (*Id.* at 1194).

For this reason, staff finds that the amendment to section 13519, subdivision (c)(5), as applied to continuing training, is mandated by the state. It is therefore further analyzed under Issue 2 below.

**Response policy, victim assistance & information (§ 13701, subd. (c)(7) & (c)(9)(D)):** The test claim statute added the following underlined provisions to section 13701’s domestic violence response policy:

- (subd. (c)(7)): Include standards for “Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim’s residence.”

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<sup>42</sup> See also POST’s regulation, California Code of Regulations, title 11, section 1005, subdivision (a)(9).

<sup>43</sup> Penal Code section 832, subdivision (g).

- (subd. (c)(9)(D)): Include in written information given to the victim “A statement that, “For information about the California victims’ compensation program, you may contact 1-800-777-9229.””

Before the test claim statute, the domestic violence response policy was not required to include the underlined provisions above.

Therefore, adding these statements to the domestic violence response policy is required based on the plain language of section 13701, subdivision (a), which states: “Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers’ responses to domestic violence calls ... .”<sup>44</sup> [Emphasis added.]

The Legislature, however, has suspended the underlying requirement to develop, adopt, and implement policies and standards for officers’ responses to domestic violence calls. As discussed in the Background, the Commission approved the *Domestic Violence* test claim (CSM-4222) in 1987. As stated in the parameters and guidelines, local agencies are eligible for reimbursement for the following activities: (1) developing, adopting and implementing a Domestic Violence Policy; (2) preparing a statement of information for victims of incidents of domestic violence; (3) preparing a statement of information for victims of domestic violence; and (4) reporting to the Attorney General. The Commission also found that furnishing the victim with written information when responding to domestic violence incidents, as well as report writing and other specified costs are reimbursable. Except for one year, the Legislature has suspended Statutes 1984, chapter 1609<sup>45</sup> in each budget act in fiscal years 1992-1993 through 2004-2005.<sup>46</sup> Although the budget acts do not mention Statutes 1985, chapter 668, (part of the *Domestic Violence* decision, CSM-4222), staff finds that the Legislature suspended it also. As specified in the State Controller’s Office Claiming Instructions for CSM-4222, the entire domestic violence program as outlined in the parameters and guidelines was suspended.<sup>47</sup>

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<sup>44</sup> This finding is consistent with the Commission’s decision in the *Domestic Violence* decision (CSM-4222), attached in Exhibit E.

<sup>45</sup> Except for the 2003-2004 budget, Statutes 1984, chapter 1609 has been suspended by the Legislature since the operative date of the current test claim statutes (January 1, 1999), as follows: Statutes 1998, chapter 282, Item 9210-295-001, Schedule (8), Provision 2; Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3.

<sup>46</sup> The Legislature did not suspend the mandate in 2003-2004. However, chapter 1609 was suspended again in the 2004-2005 budget act (Stats. 2004, ch. 208): Item 9210-295-0001, Schedule (3), Provision 5.

<sup>47</sup> State Controller’s Office, County Mandated Cost Manual, Revised 9/94, page 1 (in Exhibit F).

Thus, the issue here is what effect the suspension of *Domestic Violence* CSM-4222 (§ 13701, Stats. 1984, ch. 1609; Stats. 1985, ch. 668) has on the analysis of the test claim amendments to Penal Code section 13701.

DOF comments that the Legislature has suspended the mandates imposed by Statutes 1984, chapter 1609 relating to law enforcement responses to domestic violence. According to DOF, "until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at issue in the present matter would similarly not be reimbursable."

Claimant disagrees, arguing that the suspension of Statutes 1984, chapter 1609 does not include the victim card provisions.<sup>48</sup> According to claimant, because chapter 1609's 'optional' requirements are different from the mandated requirements in the test claim legislation, chapter 1609 is not relevant as to whether the test claim is reimbursable.

For reasons stated below, staff finds that for years in which the Legislature suspends the mandate to develop, adopt, and implement a domestic violence response policy, adding the provisions in (c)(7) and (c)(9)(D) to the response policy is voluntary and not mandated by the state. But for years when the Legislature does not suspend the mandate to develop, adopt, and implement a domestic violence response policy, the activity of adding the provisions in (c)(7) and (c)(9)(D) to the response policy is mandated by the state.

Government Code section 17581, subdivision (a), governs mandate suspension. It makes complying with test claim statutes optional for local agencies on two conditions. First, the Commission (or the Legislature or any court) must find that the test claim statute, or any portion thereof, is a reimbursable state mandate. Second, the Legislature must specify in the budget that the test claim statute is not reimbursable for the fiscal year (by appropriating zero dollars for the program). Government Code section 17581, subdivision (a), states the following:

No 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 all of the following apply:

- (1) The statute or executive order, or portion thereof, has 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 pursuant to Section 6 of Article XIII B of the California Constitution.
- (2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being

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<sup>48</sup> Claimant cited the victim card provisions of Penal Code section 13701, but the arguments also apply to the victim card provisions of Penal Code 264.2. It appears claimant's comments implicitly refer to the following prior Commission decisions: (1) *Domestic Violence*, CSM-4222 (1987) [Stats. 1984, ch. 1609 & Stats. 1985, ch. 668]; and (2) *Rape Victims Counseling Center Notice*, CSM-4426 (1993) [Stats. 1991, ch. 999 & Stats. 1992, ch. 224] (in Exhibit E).

one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursement.

The activity required by the test claim statute to amend the original domestic violence response policy is included within the suspended program. The test claim statute requires adding transportation to "a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence" to the emergency assistance provision of the domestic violence response policy. It also requires adding victim's compensation program contact information to the domestic violence response policy. The underlying suspended program encompasses these emergency assistance and victim information test claim amendments.

Since the underlying domestic violence response policy is voluntary in years that it is suspended by the Legislature, the local agencies' obligation to amend the response policy is also voluntary in years the suspension is in effect. The California Supreme Court, in *Kern High School District*, found that "if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate."<sup>49</sup> The court further stated, on page 731 of the decision, that:

*[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, without regard to whether claimant's participation in the underlying program is voluntary or compelled.*  
[Emphasis added.]

The Commission is required to follow the holding of the California Supreme Court in interpreting state mandate issues.

Therefore, for fiscal years when the *Domestic Violence*, CSM-4222 (1987) program is suspended, staff finds that adding the emergency assistance and victim information to the domestic violence response policy, as required by Penal Code section 13701, subdivision (c)(7) and (c)(9)(D), is part of the suspended mandate, CSM-4222, and is optional. For fiscal years when the Legislature does not suspend the program, staff finds that adding the emergency assistance and victim information to the response policy is mandated by the state. Thus, the analysis continues under Issue 2 as to whether the activities in Penal Code section 13701, subdivision (c)(7) and (c)(9)(D), constitute a new program or higher level of service in years that the Legislature does not suspend the underlying domestic violence response policy program (CSM-4222).

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<sup>49</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th at page 743.

**Response policy; victim card (§ 13701 subd. (c)(9)(H)):** The test claim statute requires local agencies to add the following to the victim card provision in the domestic violence response policy: “(i) The names and phone number of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837 ... [¶]...[¶] (iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.”

The victim card provision was not part of the suspended domestic violence response policy mandate because it was added to section 13701 in 1991, and was the subject of a prior test claim: *Rape Victims Counseling Center Notice* (CSM-4426) that was approved by the Commission. In it, the Commission found that revising the victim card, and furnishing it to victims, is reimbursable. The Commission's decision in *Rape Victims Counseling Center Notice* has not been suspended by the Legislature.

Therefore, staff finds that adding the following to the domestic violence response policy is mandated by the state: (1) phone numbers of or county hotlines for local battered women shelters and (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

**Providing the victim card (§ 264.2, subd. (a)):** Section 1.5 of Statutes 1998, chapter 698 amended subdivision (a) of section 264.2 to require law enforcement officers to give victims of specified sex crimes a Victim of Domestic Violence Card, or victim card. The test claim statute adds victims of two crimes--alleged battery or corporal injury on a spouse or other specified victim--to the list of those for which a victim card is provided. Statutes 1998, chapter 698 amended section 264.2, subdivision (a) as follows (added text underlined):

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G)<sup>50</sup> of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

Penal Code section 243, subdivision (e), involves battery against “a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.” Penal Code section 273.5 involves willful infliction of corporal injury on a “spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.”

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<sup>50</sup> The reference to subparagraph (G) of paragraph 9 of subdivision (c) of Penal Code section 13701 is in error, as (G) does not refer to the victim card. The correct reference to victim cards is subparagraph (H). Subparagraph (G) requires providing victims with a statement about the right to file civil suit for certain losses and expenses. This subparagraph predates the test claim statutes and is not analyzed herein.

Staff finds that Penal Code section 264.2, subdivision (a), as amended by the test claim statute imposes a state-mandated activity on local agencies to provide two new groups of victims of specified crimes with a victim card.

**Summary:** On the issue of whether or not the test claim statutes impose a state-mandate activity on local agencies, staff finds the following.

- 13701 (d): DV arrest policy
- 264.2 (b)(4): Excluding the support person
- 13519 (c)(5): Basic training
- 13519 (c)(5): Continuing training
- 13701 (c)(7) & (c)(9)(D): response policy, victim assistance and information
- 13701 (c)(9)(H): Response policy, victim card
- 264.2 (a): Providing the victim card
- No. A de minimis activity intended to implement a federal law.
- No. A discretionary activity.
- No. Requirement is on POST and on person seeking peace officer status.
- Yes, for all practical purposes not voluntary. *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.
- Yes, adding statements to the response policy is mandatory in years in which the Legislature has not suspended the *Domestic Violence* mandate.
- Yes, amending the victim card provision in the response policy is mandatory.
- Yes, providing victim cards is mandatory.

#### **B. Does the test claim legislation qualify as a program under article XIII B, section 6?**

For the remaining test claim statutes (§§ 13519, subd. (c)(5), & 13701, subd. (c), & 264.2, subd. (a), as amended by the test claim statutes) to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>51</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>52</sup>

The test claim statutes pertain to assisting and distributing information to domestic violence victims and domestic violence training for law enforcement. These activities are peculiarly governmental public safety functions administered by local law enforcement agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements on local agencies that do not

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<sup>51</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>52</sup> *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

apply generally to all residents and entities of the state. Therefore, staff finds the test claim statutes constitute a "program" within the meaning of article XIII B, section 6.

**Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?**

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.<sup>53</sup>

**Continuing training (§ 13519, subd. (c)(5)):** Staff found, under issue 1 above, that local agencies are required to include the "signs of domestic violence" in the course content for the domestic violence continuing education training course for "each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence."

In the *Domestic Violence Training and Incident Reporting* Statement of Decision (96-362-01), the Commission found that the domestic violence continuing education course required by Penal Code section 13519, subdivision (e)<sup>54</sup> (amended by Stats. 1995, ch. 965) is not a reimbursable state-mandated program. The Commission determined that because non-supervisory patrol officers are already required to take 24 hours of continuing training every two years,<sup>55</sup> requiring the two-hour domestic violence course<sup>56</sup> within the existing 24-hour requirement does not impose increased costs mandated by the state.

The California Court of Appeal upheld the Commission's decision in *County of Los Angeles v. Commission on State Mandates*.<sup>57</sup> Since the court's holding was based on the 1995 version of section 13519, the issue is whether the test claim amendment could alter that conclusion.

The *County of Los Angeles* court stated,

[L]ocal law enforcement agencies may choose from a menu of course offerings to fulfill the 24-hour requirement. ...Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. ...However, merely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources ...by mandating the inclusion of domestic violence training. ...[T]he state is requiring certain courses to be placed within an already

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<sup>53</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>54</sup> This is currently section 13519, subdivision (g) as amended by Statutes 1998, chapter 701.

<sup>55</sup> California Code of Regulations, title 11, section 1005, subdivision (d)(1).

<sup>56</sup> California Code of Regulations, title 11, section 1081, subdivision (a)(25).

<sup>57</sup> *County of Los Angeles v. Commission State Mandates*, *supra*, 110 Cal. App. 4th 1176.

existing framework of training. This loss of "flexibility" does not... require the County to expend funds that previously had been expended on the POST program by the State.<sup>58</sup>

Thus, the court concluded that the statute did not mandate a higher level of service.<sup>59</sup>

In adding "the signs of domestic violence" to the domestic violence continuing training content, the amendment to section 13519 is not a higher level of service because it does not alter the factors upon which the court relied, nor does it increase the existing framework of training. Local law enforcement's requirement to take the two-hour domestic violence course, and to take 24-hours of training every two years, remain the same. The test claim statute does not increase the hourly requirement for continuing training. Therefore, staff finds that the test claim amendment to section 13519, subdivision (c)(5), as it relates to continuing training (amended by Stats. 1998, ch. 701) does not constitute a new program or higher level of service.

**Response policy, victim assistance (§ 13701 subd. (c)(7)):** Statutes 1998, chapter 702 amended section 13701, subdivision (c)(7), to add the one-time activity of amending law enforcement's policies and standards for officers' responses to domestic violence calls. Specifically, chapter 702 added to the policy, "transportation to a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence."<sup>60</sup> Although this activity is currently voluntary because it is part of the legislatively suspended program, as discussed above, further analysis is necessary for years when the underlying program is not suspended.

Preexisting law did not require law enforcement's domestic violence response policy to include "transportation to a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence." Therefore, staff finds that adding these provisions to the domestic violence response policy is a new program or higher level of service only in years when the Legislature does not suspend the underlying domestic violence response policy program (CSM 4222).

**Response policy, victim information (§ 13701 subd. (c)(9)(D)):** The test claim statute (Stats. 1998, ch. 702, § 3.3) amended the domestic violence response policy by requiring local agencies to include in the response policy the following:

- Include in written information given to the victim "A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

Although this activity is currently voluntary because it is part of the legislatively suspended program, as discussed above, further analysis is necessary for years when the underlying program is not suspended.

Preexisting law required the policy to include giving victims other assorted information, including information about shelters, community services, restraint of the alleged perpetrator, and legal

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<sup>58</sup> *Id.* at page 1194.

<sup>59</sup> *Id.* at page 1193.

<sup>60</sup> Penal Code section 13701, subdivision (c)(7).



information. Under prior law, however, the policy was not required to include giving the victim information about the California victims' compensation program.

Therefore, staff finds that the one-time activity of inserting this contact information for the victims' compensation program, as specified in the test claim statute, into the domestic violence response policy, is a new program or higher level of service only in years when the Legislature does not suspend the underlying program.

**Response policy, victim card (§ 13701 subd. (c)(9)(H)):** The test claim statute amended subdivision (c)(9)(H) of section 13701, which contains the policy's description of the victim card's contents. It was amended to add information to the card, as follows:

(i) The names and phone number of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837 ... [¶]...[¶]

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime."

Preexisting law required the victim card to include the following specified information:

- (i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.
- (ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.
- (iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

Prior law did not require the domestic violence response policy's description of the victim card to include information about battered women shelters or a statement regarding the criminality of domestic violence or assault by a spouse. Since the test claim statute altered the victim card to add this information, new printing would be required.

Therefore, staff finds that the one-time activities of inserting information about battered women shelters and a statement regarding the criminality of domestic violence or assault by a person known to the victim or a spouse, as specified in the test claim statute, into the domestic violence response policy, and printing victim cards to include the new information, is a new program or higher level of service.<sup>61</sup>

**Providing the victim card (§ 264.2, subd. (a)):** Section 1.5 of Statutes 1998, chapter 698 amended subdivision (a) of section 264.2, which specifies the types of victims who must be provided with a victim card.

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<sup>61</sup> Because the Legislature has not suspended the Commission's *Rape Victims Counseling Center Notice* decision, CSM-4426 (1993), (in Exhibit E) suspension is not an issue for victim cards.

The test claim statute adds victims of two crimes--alleged battery or corporal injury on a spouse or other specified victim--to the list of those for which a victim card is provided. Statutes 1998, chapter 698 amended section 264.2, subdivision (a) as follows (added text underlined):

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G)<sup>62</sup> of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

Penal Code section 243, subdivision (e), involves battery against "a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship." Penal Code section 273.5 involves willful infliction of corporal injury on a "spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child."

Prior law required law enforcement agencies to provide a victim card to victims of the following crimes: rape, sex with a minor, spousal rape, sodomy, oral copulation, and penetration by a foreign object. The amendment to section 264.2, subdivision (a), requires law enforcement to provide victim cards to victims of an alleged battery or corporal injury on a spouse or other specified victim. Because this amendment expands the universe of victim card recipients to include victims of two new crimes -- spousal battery and willful infliction of corporal injury -- staff finds that section 264.2, subdivision (a), as amended by Statutes 1998, chapter 698 constitutes a new program or higher level of service.

**Summary:** As to whether or not the test claim statutes are a new program or higher level of service subject to article XIII B, section 6, staff finds the following:

- 13519 (c)(5): Continuing training
- 13701 (c)(7): Response policy, victim assistance
- 13701 (c)(9)(D): Response policy, victim information
- No, not a new program or higher level of service. *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.
- Yes, the one-time activity of adding statements to the response policy is a new program or higher level of service if the Legislature has not suspended the *Domestic Violence* mandate.
- Yes, the one-time activity of adding contact information to the response policy is a new program or higher level of service if the Legislature has not suspended the *Domestic Violence* mandate.

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<sup>62</sup> As stated in footnote 50 above, the reference to subparagraph (G) of paragraph 9 of subdivision (c) of Penal Code section 13701 is in error, as (G) does not refer to the victim card. The correct reference to victim cards is subparagraph (H).

- 13701 (c)(9)(H): Response policy, victim card
- Yes, the one-time activities of amending the victim card provision to the response policy and reprinting cards is a new program or higher level of service.
- 264.2 (a): Providing the victim card
- Yes, giving out victim cards is a new program or higher level of service.

**Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?**

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose increased costs mandated by the state.<sup>63</sup> Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines “costs mandated by the state” as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

**Response policy, victim information (§ 13701, subs. (c)(7) & (c)(9)(D)):** As discussed above, for years in which “Statutes 1984, chapter 1609”<sup>64</sup> is not suspended in the budget act, the one-time activity of adding the following information to the domestic violence response policy is a mandated new program or higher level of service:

- Victim assistance provisions: “transportation to a hospital for treatment when necessary,” and “assistance in safe passage out of the victim’s residence.” (§ 13701, subd. (c)(7).)
- Victim notice: “A statement that, “For information about the California victims’ compensation program, you may contact 1-800-777-9229.” (§ 13701, subd. (c)(9)(D).)

Except for fiscal year 2003-2004, the underlying program has been suspended by the Legislature since the effective date of the test claim statute. According to a declaration provided by the claimant, the claimant incurred costs for this one-time activity between January 1, 1999, and June 30, 1999, when the suspension was in effect and the state did not mandate the activities.<sup>65</sup> Therefore, there is no evidence in the record that the activity of adding victim assistance

<sup>63</sup> *Kern High School Dist., supra*, 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>64</sup> The suspended budget provision states “Statutes 1984, chapter 1609.” As discussed above, this refers to the Commission’s decision in the *Domestic Violence* test claim CSM-4222 (1991) (in Exhibit E).

<sup>65</sup> Declaration of Martha Zavala, May 7, 1999, page 4, Schedule A (in Exhibit A).

information and information about the victims compensation program, as required by Penal Code section 13701, subdivisions (c)(7) & (c)(9)(D), to the domestic violence response policy resulted in "costs mandated by the state," within the meaning of Government Code section 17514, to the claimant or any other local agency. Therefore, reimbursement is not required for Penal Code section 13701, subdivisions (c)(7) & (c)(9)(D).

**Response policy, victim card, and providing the victim card (§§ 13701, subd. (c)(9)(H), 264.2, subd. (a)):** As indicated above, staff finds the following activities constitute mandated new programs or higher levels of service:

- The one-time activities of amending the victim card provision of the domestic violence response policy to include information about battered women shelters and a statement regarding the criminality of domestic violence or assault by a spouse, and printing victim cards to include the new information, as specified in Penal Code section 13701, subdivision (c)(9)(H);
- Providing victim cards to victims of an alleged spousal battery and willful infliction of corporal injury, as required by Penal Code section 264.2, subdivision (a).

In the test claim, the claimant states that it would incur increased costs in excess of \$200 per annum,<sup>66</sup> which was the standard under Government Code section 17564, subdivision (a), at the time the claim was filed. For the costs of printing the new cards, claimant estimated costs of \$8,000.<sup>67</sup> There is no evidence in the record to dispute these costs.

Furthermore, none of the exceptions in Government Code section 17556 apply to this claim.

Therefore, staff finds there are costs mandated by the state within the meaning of Government Code sections 17514 for these activities.

#### **Issue 4: Does the Commission have jurisdiction over activities decided in a prior test claim?**

**Providing victim assistance & information (§ 13701, subd. (c)(7)):** Claimant requests reimbursement to implement portions of the domestic violence response policy. For example, the claimant requests reimbursement for transporting victims to a hospital for treatment and assisting victims out of the residence. Staff finds that the Commission already decided these "emergency assistance" activities in the *Domestic Violence* parameters and guidelines, CSM-4222 (1987), and therefore has no jurisdiction over this activity for purposes of this claim.<sup>68</sup>

The statutory scheme for mandate determinations under article XIII B, section 6 establishes finality for decisions adopted by the Commission. The Commission has no continuing jurisdiction over its

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<sup>66</sup> The current standard is \$1000, amended by Statutes 2002, chapter 1124, effective September 30, 2002.

<sup>67</sup> Test Claim 98-TC-14, page 3.

<sup>68</sup> The decision of the quasi-judicial administrative agency, if not challenged within the applicable statute of limitations, binds the parties on the issues litigated. *Hollywood Circle, Inc. v. Department of Alcoholic Beverage* (1961) 55 Cal.2d 728, 731-733.

decisions, including the *Domestic Violence* decision (CSM-4222). Until 1999, the Commission did not have any statutory authority to reconsider test claim decisions. In 1999, Government Code section 17559 was amended to authorize the Commission to order reconsideration, on petition of a party, within 30 days after the statement of decision is issued. (Stats. 1999, ch. 643.)

This finality also applies to parameters and guidelines. Once the parameters and guidelines are adopted, the State Controller's Office has 60 days to issue claiming instructions to assist local agencies in claiming costs,<sup>69</sup> who then have 120 days from the date of the claiming instructions to file their reimbursement claims with the State Controller's Office for initial fiscal year costs.<sup>70</sup> Although the parties may request amendments to the parameters and guidelines, the request must be filed with the Commission before the deadline for initial claims to apply the proposed amendment retroactively back to all years eligible for reimbursement.<sup>71</sup> Requests to amend parameters and guidelines filed after the deadline for initial claims must be submitted on or before January 15 following a fiscal year in order to establish eligibility for that fiscal year.<sup>72</sup> Thus, Commission adopted amendments may apply to the prior fiscal year if filed before January 15 following a fiscal year. A request to amend the parameters and guidelines for *Domestic Violence* could not be retroactive to the initial reimbursement period of the original decision unless it were filed before the due date for the initial reimbursement claims.

The test claim statute in this case, Penal Code section 13701, subdivision (c)(7), added the following underlined provisions to section 13701's domestic violence response policy:

Include standards for "Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence."

In years when the underlying *Domestic Violence* program is not suspended, claimants are eligible to receive reimbursement for, among other things: '(1) development, adoption and implementation of a Domestic Violence Policy.' The emergency assistance to victims, medical care, and transportation to a shelter were all included in the original test claim statute's response policy. Penal Code section 13701 originally included "[e]mergency assistance to victims, **such as ....**" [Emphasis added.] The phrase, "such as" means, "for example" or "of a kind specified."<sup>73</sup> Thus, the test claim statute in this case merely adds further examples of assistance after the "such as."

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<sup>69</sup> Government Code, section 17558, subdivision (b).

<sup>70</sup> Government Code, section 17561, subdivision (d)(1).

<sup>71</sup> Government Code, section 17557; California Code of Regulations, title 2, section 1183.2, subdivision (b).

<sup>72</sup> Government Code, section 17557; California Code of Regulations, title 2, section 1183.2, subdivision (c).

<sup>73</sup> See <<http://dictionary.reference.com/search?q=such%20as>> as of October 6, 2004.

These amendments were called "clarifying" by the Assembly Public Safety Committee.<sup>74</sup> Since the amendments are clarifying only, they do not increase the level of service required of local agencies.<sup>75</sup>

Thus, because the activities of emergency assistance, medical care, and transportation were already decided in the original *Domestic Violence* statement of decision and parameters and guidelines, the Commission has no jurisdiction over these activities in this claim.

Claimant's comments on the revised draft staff analysis state that claimant concurs with staff's analysis, and concurs that the program "may, in 2005-06 and subsequent fiscal years, impose additional reimbursable costs in providing emergency assistance to domestic violence victims as noted ... [in] staff's analysis." To clarify, staff does not find reimbursable costs for emergency assistance in future fiscal years. Rather, should the Legislature not suspend<sup>76</sup> the *Domestic Violence* mandate (CSM-4222), the activities in the parameters and guidelines, as mentioned on pages five and 13 of this analysis, and as listed in Exhibit E, would be reimbursable.

Claimant also requested reimbursement for assisting children out of the residence, but this activity is not in the enacted version of the test claim statute that amended section 13701 (Stats. 1998, ch. 702, §§ 3.3 & 6). The last chaptered bill is assigned the higher chapter number,<sup>77</sup> which becomes law when legislative bills are double or triple-joined, as they were in this case.<sup>78</sup> Neither

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<sup>74</sup> Assembly Public Safety Committee, Analysis of Assembly Bill No. 2172 (1997-98 Reg. Sess.) as introduced (in Exhibit F). Originally, the bill referred to "guaranteeing" safe passage away from the residence, but was later changed to "assisting." This bill was later double joined to Assembly Bill No. 2177 (Stats. 1998, ch. 702), which was enacted as to section 13701.

<sup>75</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 877.

<sup>76</sup> Proposition 1A, enacted in November 2004, among other changes, adds subdivision (b) to article XIII B, section 6 of the California Constitution, as follows:

[F]or the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

<sup>77</sup> See Government Code sections 9510 and 9605.

<sup>78</sup> Double-joined bills are two bills that propose to amend the same code section, drafted so that the amended bill does not override the provisions of the bill that affects the same section. In this case, section 6, subdivision (c) of Statutes 1998, chapter 702 states:

(c) Section 3.3 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2172. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201,

chapters 698 nor 701, which include the provision regarding assisting children, amended or became law as to Penal Code section 13701.<sup>79</sup> So staff finds that the test claim statute does not mandate assisting children out of the residence.

**Issue 5 – If the Commission finds a reimbursable state mandate in the test claim statute(s), does article XIII B, section 6, subdivision (b)(5), apply to this test claim?**

On November 2, 2004, the voters enacted Proposition 1A, which among other changes, adds subdivision (b) to article XIII B, section 6. Subdivision (b) states in relevant part:

(1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

(2) Payable claims for costs incurred prior to the 2005-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law. [¶] ... [¶].

(4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.

(5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section. [Emphasis added.]

Subdivision (b)(5) excludes specified types of mandates from the operation of subdivision (b). The portions of this test claim that staff finds to be reimbursable mandates, as listed below, do not apply to the “employment status of any local government employee or retiree, or any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment.” Rather, they are merely new local government duties. Therefore, staff finds that subdivision (b)(5) does not apply to this test claim.

**Conclusion**

Therefore, staff finds that section 13701, subdivision (c)(9)(D) and (H) (as amended by Stats. 1998, ch. 702), and section 264.2, subdivision (a) (as amended by Stats. 1998, ch. 698), impose a

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[chapter 698] and AB 2172, [chapter 701] in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative. [Emphasis added.]

<sup>79</sup> Statutes 1998, chapter 698, sections 2.1, 2.3 and 5. Statutes 1998, chapter 701, sections 2, 2.1, 2.2, 2.3 & 3.

reimbursable state-mandated program on local agencies within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

Staff finds that the following activities are reimbursable.

- Providing victim cards to victims of the following crimes: (1) Penal Code section 243, subdivision (e), battery against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship;<sup>80</sup> and (2) Penal Code section 273.5, willful infliction of corporal injury on a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.<sup>81</sup> (§ 264.2, subd. (a)).
- The one-time cost of printing victim cards to add the following new information: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).
- The one-time cost of adding to the domestic violence response policy two new crimes (§§ 243, subd. (e), & 273.5) to those for which a victim card is given out (§ 13701, subd. (c)(9)(H)).
- The one-time cost of adding the following to the description of the victim card in the domestic violence response policy: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).

Staff also finds that all other amendments to the test claim statutes, as discussed above, do not constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

### **Recommendation**

Staff recommends that the Commission partially approve this test claim and adopt this analysis.

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<sup>80</sup> Penal Code section 243, subdivision (e).

<sup>81</sup> Penal Code section 273.5.



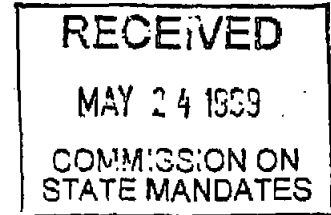
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ALAN T. SASAKI  
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA, 90012  
PHONE: (213) 974-8301 FAX: (213) 626-5427



May 21, 1999

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
1300 I Street, Suite 950  
Sacramento, California 95814

Dear Ms. Higashi:

**County of Los Angeles - Test Claim  
Chapter 698, Statutes of 1998  
Amending Penal Code Sections 264.2 and 13701  
Chapter 701, Statutes of 1998  
Amending Penal Code Sections 13701 and 13519  
Domestic Violence Arrests and Victim Assistance**

The County of Los Angeles submits this test claim to obtain timely and complete reimbursement for the State-mandated local program in the referenced statutes.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Sincerely,

Alan Sasaki  
Auditor-Controller

AS:JN:LK  
Enclosures

**County of Los Angeles - Test Claim**  
**Chapter 698, Statutes of 1998**  
**Amending Penal Code Sections 264.2 and 13701**  
**Chapter 701, Statutes of 1998**  
**Amending Penal Code Sections 13701 and 13519**  
**Domestic Violence Arrests and Victim Assistance**

State of California  
COMMISSION ON STATE MANDATES  
1414 K Street, Suite 315  
Sacramento, California 95814  
(916) 323-3562

For Official Use Only
Claim No. 98-TC-14

**TEST CLAIM FORM**

Local Agency or School District Submitting Claim

Los Angeles County

Contact Person

Leonard Kaye

Telephone No.

(213) 974-8564

Address

500 West Temple Street, Room 603  
Los Angeles, California 90012

Representative Organization to be Notified

California State Association of Counties

This claim alleges the existence of "costs mandated by the state" within the meaning of section 17514 of the Government Code, and Section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page 1

**IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A CLAIM ON THE REVERSE SIDE.**

Name and Title of Authorized Representative

Alan Sasaki  
Auditor - Controller

Telephone No.

(213) 974-8301

Signature of Authorized Representative

Date



May 21, 1999

**County of Los Angeles - Test Claim**  
**Chapter 698, Statutes of 1998**  
**Amending Penal Code Sections 264.2 and 13701**  
**Chapter 701, Statutes of 1998**  
**Amending Penal Code Sections 13701 and 13519**  
**Domestic Violence Arrests and Victim Assistance**

**Notice of Filing**

The County of Los Angeles filed the reference test claim on May 21, 1999 with the Commission on State Mandates of the State of California at the Commission's Office, 1300 I Street, Suite 950, Sacramento, California 95814.

Los Angeles County does herein claim full and prompt payment from the State in implementing the State-mandated local program found in the subject law.

**County of Los Angeles - Test Claim  
 Chapter 698, Statutes of 1998  
 Amending Penal Code Sections 264.2 and 13701  
 Chapter 701, Statutes of 1998  
 Amending Penal Code Sections 13701 and 13519  
Domestic Violence Arrests and Victim Assistance**

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Attachment: Declaration of Leonard Kaye, SB90 Coordinator,  
 County of Los Angeles

**County of Los Angeles - Test Claim**  
**Chapter 698, Statutes of 1998**  
**Amending Penal Code Sections 264.2 and 13701**  
**Chapter 701, Statutes of 1998**  
**Amending Penal Code Sections 13701 and 13519**  
**Domestic Violence Arrests and Victim Assistance**

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## 1. Statutory Requirements

Chapter 698, Statutes of 1998, amending Penal Code sections 264.2 and 13701 and Chapter 701, Statutes of 1998, amending Penal Code sections 13701 and 13519, now requires law enforcement agencies to provide additional services, not required under prior law.

According to the Legislative Counsel's Digest of Chapter 698, Statutes of 1998, "... [t]his bill would expand the group of victims entitled to receive the domestic violence card to include victims of an alleged battery or corporal injury on a domestic partner..."; "[t]his bill would expand the group of victims entitled to receive the domestic violence card to include victims of battery or corporal injury on a spouse or a domestic partner..."; "... the card include the additional statement that battery and corporal injury on a spouse or domestic partner is a crime"; and, that "[b]y expanding the duties of local law enforcement officials, this bill would create a state-mandated local program".

According to the Legislative Counsel's Digest of Chapter 701, Statutes of 1998, "... [t]his bill would require ... training ... to include the techniques for recognizing the signs of domestic violence"; "[t]his bill would add to the list of responses required to be included in ... ["policies and standards for officers' responses to domestic violence calls"] .... (1) transportation of domestic violence victims and children to a hospital for treatment when necessary and (2) police standbys for assisting a domestic violence victim with the removal of personal property and safe passage out of their residences"; and, that "[b]y increasing the duties of local officials, this bill would create a state-mandated local program".

Specifically, Penal Code section 264.2 as amended Chapter 698, Statutes of 1998 requires that two new groups of victims (of Penal Code sections 273.5 and 243(e)), in addition to the prior (and continuing) group of victims (of Penal Code sections 261, 261.5, 262, 286, 288a, and 289) must now be provided with a victim of domestic violence and/or rape card and services.

Also, Penal Code section 13701 as amended by Chapter 698, Statutes of 1998 and Chapter 701, Statutes of 1998 specifically states new requirements, in bold print below, in subparagraph (G) of paragraph (9) of Section 13701 of the Penal Code:

" (D) **A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229.**

(H)(i) **The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in**

**Section 13837, and their 24-hour counseling service telephone numbers.**



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**(H)(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. "**

Regarding domestic violence arrests, I declare that Penal Code section 13701(c)(7), as amended by both Chapter 698, Statutes of 1998 and Chapter 701, Statutes of 1998, states new requirements, in **bold print** below:

**"Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence."**

Regarding determining the primary aggressor pursuant to arrest, I declare that Penal Code section 13519(c)(5) requires that training on "[t]he signs of domestic violence" be provided in the basic training for law enforcement officers and, I believe, also as a part of mandatory updated refresher training as set forth under section Penal Code section 13519(g) which provides, in pertinent part, that "[e]ach law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence complete, every two years, an updated course of instruction on domestic violence..."

## 2. New Duties

The methods and manner of compliance with the newly mandated requirements, set forth above, may vary from jurisdiction to jurisdiction and the average or standard times for Los Angeles County's performance of its newly mandated duties, set forth below, may not be typical for all jurisdictions.

The average or standard times that Los Angeles County Sheriff deputies are now required to routinely spend on performing new State-mandated duties under the subject law, as set forth above, and also detailed in an attached declaration of Bernice K. Abram in Tab 1, are as follows:

### 1. Victim Information

- A. California victims' compensation, 2 minutes per call.
- B. Local shelters for battered women, 8 minutes per call.
- C. Telephone numbers for local shelters and rape victim counseling centers, 2 minutes per call.

D. Domestic violence-by-spouse statement, 2 minutes per call.

2. Emergency Assistance

A. To children in providing medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence, 10 minutes per call.

B. To victims in providing transportation to a hospital for treatment when necessary and assisting in safe passage out of the victim's residence, 5 minutes per call.

3. Training (for officers specified in Penal Code section 13519(g))

A. New victim information, 5 minutes per officer.

B. New emergency assistance, 10 minutes per officer.

C. Signs of domestic violence, 15 minutes per officer .

Therefore, new duties have been imposed on the County under the subject law.

3. Compliance Costs

Los Angeles County has incurred costs in complying with the subject law. Such costs are estimated for the period January 1, 1999 through June 30, 1999:

A. One-Time Costs

(1) Updating policies and procedures \$2,240  
[40 hours @ \$56 hour]

(2) Modifying record-keeping systems \$1,000  
[20 hours @ \$50 hour]

B. Continuing Costs

(1) Printing new domestic violence/rape cards \$8,000  
[20,000 cards @ \$.40 card]

(2) Victim Information (Note 1)

(a) Victim compensation	\$1,632
(b) Battered women shelters	\$6,528
(c) Counseling center, other telephone numbers	\$1,632
(d) Domestic violence-by-spouse statement	\$1,632

(3) Emergency Assistance (Note 2)

(a) Children	\$ 765
(b) Victims	\$ 383

(3) Training (Note 3)

(a) New victim information	\$2,550
(b) New emergency assistance	\$5,100
(c) Signs of domestic violence	\$7,650

Therefore, new costs have been imposed on the County under the subject law (Note 4).

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Note (1) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 960 specified calls for the period January 1, 1999 through June 30, 1999.

Note (2) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 90 specified calls for the period January 1, 1999 through June 30, 1999.

Note (3) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 600 officers receiving training in the period January 1, 1999 through June 30, 1999.

Note (4) Also see the declaration of Martha Y. Zavala, Assistant Director, Fiscal Administration, Office of Administrative Services Sheriff's Department, County of Los Angeles in Tab 2.

#### 4. Similar Costs Have Been Found Reimbursable

Chapter 698, Statutes of 1998, amends Penal Code sections 264.2 and 13701 and Chapter 701, Statutes of 1998, amends Penal Code sections 13701 and 13519. Two prior [County of Los Angeles] test claims for reimbursement of similar types services as those claimed herein have been approved by the Commission on State Mandates.

The first reimbursable service program is "Rape Victim Counseling Center Notices". As summarized by the State Controller's Office(SCO), in their instructions to local claimants [attached in Tab 5], SCO states:

##### 1. Summary of Chapters 999/91 and 224/92

The provisions of Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code Section 13701, as amended by Chapter 999, Statutes of 1991, require local law enforcement agencies to: Reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape victim counseling center, notify the victim-selected center, and subject to the approval of the victim and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

On July 22, 1993, the Commission on State Mandates determined that Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992, resulted in state mandated costs which are reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. //

The reimbursable components specified by SCO, found on pages 2 and 3 of their instructions, are:

1. Local law enforcement agencies shall be reimbursed for the increased costs which they are required to incur to: Reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape counseling center, notify the victim-selected local rape counseling center, and subject to the victim's approval and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified

For each eligible claimant, the following one-time costs and continuing costs are reimbursable:

##### A. Initial One-Time Costs:

- (1) Costs of updating policies and procedures to conform with the special requirements of Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992.
- (2) Costs of modifying existing record-keeping systems to provide reliable and timely retrieval of verification information required by Chapter 224, Statutes of 1992, not to exceed \$2,000.

**B. Ongoing Costs:**

- (1) Costs of reprinting the existing "Victims of Domestic Violence" card to add information, relating to rape victim services, required by Chapter 999, Statutes of 1991, but not to exceed one reprinting per fiscal year.
- (2) Law enforcement's road officer, clerical, and dispatcher costs required to: Request each victim's consent to notify a rape counseling center, each time an alleged violation(s) includes at least one violation of Penal Code Sections 261, 261.5, 262, 286, 286a, 289, alleged separately or in combination with other violations; furnish a rape victim with a "Victims of Domestic Violence" card; record, file, and/or data-process state mandated information; and provide hospital verification whether the local rape victim counseling center has been notified, upon the consent of the victim. //

In addition, the "Rape Victim Counseling Center Notices" program provides for standard or average time reimbursements in a manner similar to one used here. Specifically, the "Rape Victim Counseling Center Notices" SCO claiming form "RVC-2.1" [attached in Tab 5] provides:

**(04) Description of Expenses: Complete (a) through (f)**

(a) Standard Time (Hour/Victim)	(b) No. of Victims
<b>Road Officers (10 min/victim)</b> <b>0.166 Hrs.</b> List job classification(s) 1 2 3  • Total Cases	
<b>Clericals (4 min/victim)</b> <b>0.066 Hrs.</b> 1 2 3  • Total Cases	
<b>Dispatchers (2 min/victim)</b> <b>0.033 Hrs.</b> 1 2 3	

**RAPE VICTIM COUNSELING CENTER NOTICES  
COMPONENT/ACTIVITY COST DETAIL  
Instructions**

**FORM  
RVC-2 .1**

- (01) Enter the name of the claimant.
- (02) Enter the fiscal year for which costs were incurred.
- (03) Reimbursable Component. This line identifies the activity for which costs may be claimed on form RVC-1.
- (04) Description of Expenses. Complete columns (a) through (f).
- Column (a): Road officers, clericals and dispatchers must be listed by job classification(s). Road officers are allowed ten minutes or 0.166 hours per victim for time related to the state mandate. Clericals are allocated four minutes or 0.066 hours per victim for time related to recording, filing, and/or data processing. Dispatchers are allowed two minutes or 0.033 hours per victim for time related to notification of the local rape victim counseling center by the hospital.
- Column (b) Enter the number of victims assisted by employees at each job classification. The total number of victims not exceed the number of victims shown on form RVC-1, line (03).
- Column (c) Enter the result of multiplying the standard time by the number of victims to arrive at the total time in hours.
- Column (d) Enter the hourly rate by job classification.
- Column (e) Enter the result of multiplying the total time in hours by the hourly rate to arrive at the total salaries.
- Column (f) Enter the result of multiplying the fringe benefit rate by total salaries to arrive at the amount for fringe benefits.
- (05) Total line (04) columns (e) and (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from line (05), columns (e) and (f) to form RVC-1, block (04) line (02)(b), columns (a) and (b) //

The second reimbursable service program similar to the present claim is the "Domestic Violence Arrest Policies and Standards". As summarized by the State Controller's Office(SCO), in their instructions to local claimants [attached in Tab 6], SCO states:

**1. Summary of the Mandate**

Chapter 246, Statutes of 1995, added a new subdivision (b) to Penal Code section 13701. Subdivision (b) requires the development, adoption, and implementation of written arrest policies for domestic violence offenders by July 1, 1996. Further, under subdivision (b), a local agency is required to obtain input from local domestic violence agencies in developing the arrest policies.

Previously, local agencies were required to develop, adopt, and implement written policies for response to domestic violence calls and were encouraged, but not obligated, to consult with domestic violence experts.

On September 25, 1997, the Commission adopted its Statement of Decision finding that Penal Code section 13701, subdivision (b), as added by Chapter 246, Statutes of 1995, imposed a reimbursable state mandated program upon local law enforcement agencies within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code. //

The reimbursable components specified by SCO, found on pages 2 -4 of their instructions, are:

**6. Reimbursable Activities**

For each eligible claimant, all direct and indirect costs of labor, supplies, services, travel, and training, are reimbursable for the following activities:

**A. Initial One-Time Costs**

**(1) Development of Written Arrest Policies**

(a) Meeting and conferring with "Local Domestic Violence Agencies" to obtain input in the development of the written arrest policies.

(b) Developing written arrest policies that:

- i. Encourage the arrest of domestic violence offenders if there is a probable cause that an offense has been committed;
- ii. Require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with section 2040) of Part 1 of Division 6, Division 10 (commencing with section 6200), or Chapter 6 (commencing with section 7700) of Part 3 of Division 12, of the Family Code, or section 136.2 of the Penal Code, has been violated;
- iii. Discourage, when appropriate, but not prohibit, dual arrests; and
- iv. Require peace officers to make reasonable efforts to identify the primary aggressor in any incident. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence, from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense.

**(2) Adoption of Written Policies**

Meetings between the local law enforcement agency and appropriate local government official(s) on adoption of written policies.

**(3) Training Officers About Written Arrest Policies**

(a) Printing and distributing the new written domestic violence arrest policies to all stations, substations, and other sites that normally respond to incidents of domestic violence.

- (b) Development of instructional aids and training materials for purposes of training local law enforcement officers who normally respond to incidents of domestic violence on the new domestic violence policies.
- (c) Training local law enforcement officers who normally respond to incidents of domestic violence on the new domestic violence policies.

## **B. Ongoing Costs**

### **Implementation of Written Arrest Policies**

Implementation of new written arrest policies is to identify the primary aggressor. The activities required to identify the primary aggressor are based on training material developed by the Commission on Peace Officers Standards and Training (POST).

Interview of both parties involved in the domestic violence incident.

Consideration of the following factors:

- (a) Size of the parties
- (b) Use of weapons
- (c) Is one party stronger than the other
- (d) Is one party specially trained in martial arts, boxing, or hand-to-hand combat techniques
- (e) Who is afraid
- (f) Who has the more serious injuries
- (g) Location and nature of injuries (offensive vs. defensive)
- (h) Did one party escalate the level of violence (push followed by serious beating)
- (i) History of abuse (Is one person usually the aggressor)
- (j) Timing of the second arrest (person claimed to have been assaulted only after arrested)
- (k) Existence of court protective orders
- (l) Demeanor of the parties
- (m) Use of alcohol and drugs
- (n) Existence of corroborating evidence or witnesses
- (o) Criminal history
- (p) Other legal defenses
- (q) Indicators of defensive injuries including wounds on victim's palm(s) of hand(s); wounds on inside and outside of victim's arms; bumps on victim's head (especially the back); bite marks on perpetrator's chest, biceps, or forearms; and scratches on perpetrator's face, chest, neck (strangulation cases). //



## 7. Uniform Cost Allowance

Pursuant to Government Code section 17557, the Commission on State Mandates has adopted a uniform cost allowance for reimbursement in lieu of payment of total actual costs incurred. The uniform cost allowance is applied only to Section 6, Reimbursable Activities, Component B, Implementation of New Policies, and covers all costs (direct and indirect) of performing activities described under Component B. The uniform cost allowance provides the following:

A standard time of twenty nine (29) minutes may be claimed to identify the primary aggressor in any domestic violence incident. The standard time of twenty nine (29) minutes is broken down as follows:

- Seventeen (17) Minutes - Interview of both parties
- Twelve (12) Minutes - Consideration of the factors listed above

The total cost will be determined by multiplying the number of reported responses times the average productive hourly rate, including applicable indirect costs as specified in Section 9 F, herein, times 0.48 hour (29 minutes divided by 60 minutes). //

Therefore, both prior reimbursement programs, as noted above, provide for standard or average time reimbursements in a manner similar to one used here and for reimbursements of similar types of services to those claimed herein.

## 5. Legislative Intent

According to the Senate Floor Analysis, Third Reading, AB 2172 [Chapter 701, Statutes of 1998], August 12, 1998, [attached in Tab 8]. AB 2172, [on pages 1,2]:

2. Requires every law enforcement agency in California to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls. The policies are required to include standards for specified responses, including emergency assistance to victims, such as medical care, transportation to a shelter and police standbys for removing personal property, and notice to victims of specified information.

This bill would require the law enforcement agency policies and standards for officer response to domestic violence calls to include children, transportation to a hospital for treatment when necessary, and assistance in safe passage out of a victim's residence.

The Department of Justice reports there were a total of 227,899 domestic violence-related calls for assistance in 1996. //

The intent here is further explained by AB 2172's author Sweeney [on page 2]:

" ARGUMENTS IN SUPPORT : The author states that there is not sufficient time given by law enforcement to "safe passage" of victims and children from an unsafe environment to a shelter, medical facility (if necessary) or other "safe" place. //

In addition, [on page 2] the Fiscal Committee found a fiscal effect on local government under AB 2172, as claimed herein.

Also, according to the Senate Floor Analysis, Third Reading, AB 1201 [Chapter 698, Statutes of 1998], July 30, 1998, [attached in Tab 7] AB 1201, [on pages 1,2]:

" DIGEST : This bill would add specified domestic violence offenses to the existing "Victims of Domestic Violence" card provided to victims by local law enforcement. This bill also would require additional information concerning local domestic violence resources to be included on these cards, and would require local law enforcement to provide to victims, in writing, the telephone number for information about the California victims' compensation program.

Senate Floor Amendments of 7/30/98 add technical and double-joining language to avoid chaptering-out problems.

ANALYSIS : Current law requires that a "Victims of Domestic Violence" card containing specified information concerning rights and support services, must be handed out by law enforcement to victims of enumerated sex offenses.

This bill would expand this provision to include two domestic violence offenses (battery against a spouse, et al and felony domestic violence):

Under current law, the "Victims of Domestic Violence" card must contain the names and locations of rape victim counseling centers within the county, including specified centers, and their 24-hour counseling service telephone numbers.

This bill would revise this provision to also require the inclusion of "phone numbers of or local county hotlines for, or both the phone numbers of and local country hotlines for, local shelters for battered women."

Under current law, the cards must contain the following:  
"A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime."

This bill would require that the following also be included on the card: "A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime."

Current law generally requires local law enforcement to develop and implement written policies concerning domestic violence responses. These policies must include standards for written notice to victims at the scene of specified information.

This bill would add the following notice to this requirement: "For information about the California victims' compensation program, you may contact 1-800-777-9229."

This bill is double-joined with AB 2172 (Sweeney). "

The intent here is further explained by AB 1201's author Murray [on pages 2,3]:

" ARGUMENTS IN SUPPORT . . . The author's office states, in part, "AB 1201 would provide victims of domestic violence vital information on available counseling and shelter services within their communities, as well as how to gain information about the California victims' compensation program.

"Under current statutes, law enforcement must refer victims of rape or sexual assault to appropriate rape crisis counseling centers and provide them with a "Domestic Violence Card" containing the names and phone numbers of community counseling services within the county. There is no mandate that such information be provided to victims of domestic violence nor that they be informed of available compensation from the California victims' compensation program.

"It is imperative that we provide victims with resources and access to services to assist them in breaking out of the cycle of violence. . . . It makes common sense to provide victims access to counseling services before an abusive relationship leads to other violent crimes." "

In addition, [on page 2] the Fiscal Committee found a fiscal effect on local government under AB 1201, as claimed herein.

Therefore, under both AB 1201 and AB 2172, the legislature intended for local government to provide important new services, as claimed herein; and, the Legislature recognized the fiscal costs thereby imposed on local government, as claimed herein.

Also, the Legislative Counsel, in its Digest to AB 1201 [Chapter 698, Statutes of 1998] [attached in Tab 3], on page 1, finds that "... [b]y expanding the duties of local law enforcement officials, this bill would create a state-mandated local program".

Again, in the Digest to AB 2172 [Chapter 701, Statutes of 1998] [attached in Tab 4], on page 1, the Legislative Counsel finds that "... [b]y increasing the duties of local officials, this bill would impose a state-mandated local program".

Therefore, reimbursement is due local government as claimed herein.

#### 6. State Funding Disclaimers are Not Applicable

There are seven disclaimers specified in Government Code (GC) Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in GC Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of GC Section 17556.

- (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."
- (a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.
- (b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."
- (b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.
- (c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

- (c) is not applicable as no federal law or regulation is implemented in the subject law.
- (d) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."
- (d) is not applicable as no authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service is available.
- (e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate."
- (e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature.
- (f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."
- (f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.
- (g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."
- (g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of the costs claimed herein.

#### 7. Trial Court Funding Does Not Bar Reimbursement Here

1997-98 marks the first fiscal year that the County did not opt into the Trial Court Funding Program authorized by the Brown-Presley Trial Court Funding Act (Senate Bill [SB] 612, Chapter 945, Statutes of 1988 and implemented by AB 1197, Chapter 944, Statutes of 1988. Such an option was not available. 1996-97 was the last year Brown-Presley funding was

available and consequently the last year an option could have been taken to accept trial court funding in lieu of specified state mandate reimbursements.

Under the defunct Brown-Pressly program, when counties opted to receive trial court funding they also became obligated to abide by various terms, conditions, and limitations, including those pertaining to specified state mandate reimbursements. When the funding stopped, so did its terms, conditions, and limitations.

The limitations with respect to specified state mandate reimbursements were spelled out in the State Controller's Division of Local Government Fiscal Affairs March 1989 (Brown-Pressley) Trial Court Funding Program Implementation Guide (Chapters 1, 3(part), 4 attached in Tab 9). The statutory basis for the Trial Court Funding Program is summarized on page 4 of the Trial Court Funding Program Implementation Guide.

"The process of developing a Trial Court Funding Program to provide state funds to counties for support of the operation of the trial courts began in 1985. AB 19 (Chapter 1607 of the Statutes of 1985) originally added to the law the Trial Court Funding Act of 1985. The Act was to become effective on January 1, 1986, but not operative until the effective date of statute appropriating funds for the purpose of the Act. SB 709 (Chapter 1211 of the Statutes of 1987) included appropriations to fund the Act and also amended AB 19 to provide that it become operative July 1, 1988. In addition, SB 709 amended other sections of existing law established by AB 19 affecting the Government Code, Penal Code, and Revenue and Taxation Codes. Subsequently, numerous bills were introduced to

amend AB 19 and SB 709. Ultimately, SB 612 and AB 1197 were signed into law."

SB 612 (Chapter 945, Statutes of 1988) added, inter alia, Section 77203 to the Government Code and provides that Trial Court Funding Program reimbursements to counties is in lieu of their traditional grant.

"Reimbursement to an option County pursuant to this Chapter shall be in lieu of any \$60,000 block amounts traditionally provided by superior court judgeships."

The key benefits to counties opting into the Trial Court Funding Program are summarized in the State Controller's Trial Court Funding Program Implementation Guide, page 4.

"The current Trial Court Funding Program provides "net" block grants to option counties based on the number of court judgeships, commissioners, and referees. An option County will be entitled to receive \$212,000 annually for each qualifying judicial position. Each option County will also receive a supplemental block grant for municipal and justice court judges' salaries. In addition, the Program would add 98 new judicial positions to

counties throughout the State. A Trial Court Improvement Fund is to be established to disburse \$20 million annually to counties for court construction and operating costs."

As a requirement to opt into the Trial Court Funding Program, the Legislature, imposed on counties, the requirement that counties waive their rights to seek state reimbursement for certain mandates. These certain mandates are specified in Government Code Sections 77203.5 (a) and 77203.5 (b) both added by Chapter 945, Statutes of 1988.

- (a) "The initial decision by a County to opt into the system pursuant to Section 77300 shall constitute a waiver of all claims for reimbursement for State-mandated local programs not theretofore approved by the State Board of Control, the Commission on State mandates, or the courts to the extent the Governor, in his discretion, determines the waiver to be appropriate; provided that a decision by a County to opt into pursuant to Section 77300 beginning with the second half of Fiscal Year 1988-89 shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added the chapter is chaptered, which is filed in acceptable form on or before the date the act which added this Chapter is chaptered. A County may petition the Governor to exempt any such claim from this exemption requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver."
- (b) "The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987."

With respect to the performance of mandates, as claimed herein, they do not involve "court operations" and the claimant agrees with the State Department of Finance regarding their interpretation of GC Section 77203.5(a), as stated in a letter to the County Supervisors Association of California on November 28, 1988, published on page 50 in the State Controller's Trial Court Funding Program Implementation Guide.

"Section 77203(a) does not require the waiver of any claims arising from statutes chaptered after the passage of the County's initial opt in resolution. Subsequent opt-in resolutions carry no requirement for a mandate waiver."

The County of Los Angeles' initial opt in resolution was for the period starting January 1, 1989. Government Code Section 77300 (a)(1) provides the deadline for counties initially opting in to the Trial Court Funding Program beginning January 1, 1989.

Section 77300 (a) "an option County shall notify the State of its decision to opt into the system as follows.

"For the second half of Fiscal Year 1988-89, on or before January 15, 1989."

As the County of Los Angeles passed its original opt in resolution in conformance with the January 15, 1989 deadline found in Government Code Section 77300 (a)(1) and since, subsequent to January 15, 1989, Chapter 698, Statutes of 1998 was passed on September 22, 1998 and became effective on January 1, 1999 and Chapter 701, Statutes of 1998 was passed on September 22, 1998 and became effective on January 1, 1999, the County has not waived any rights to seek and receive State-mandated cost reimbursements in implementing the mandates in the subject law during 1998-99.

Also, the County of Los Angeles has not waived its rights to pursue reimbursement of State-mandated costs incurred in 1998-99 because it did not opt into the Brown-Pressley Trial Court Funding Program. Indeed, it could not. The old funding program was gone and the new one had begun. As noted by Mark T. Willman, Staff Attorney for the Los Angeles County Municipal Courts, in his review of the the Lockyer-Isenberg Trial Court Funding Act of 1977 (Chapter 850, Statutes of 1977), included in Tab 10, on page 15, "... [i]n effect, the counties are advancing monies for the court operations during the first six months of this fiscal year and will deduct their expenditures from the full year amount they are (now) required to transmit to the (new) Trial Court Trust Fund under Government Code Section 77201".

Mr. Willman also notes in his review, on page 5, that "Government Code Section 77201 sets and governs county contributions to the (new) Trial Court Trust Fund for the 1997-98 fiscal year".

Further, Chapter 850, Statutes of 1977 (Assembly Bill 233), in Section 45, repealed Article 3 (commencing with Section 77200) of Chapter 13 of Title 8 of the Government Code, including sections 77203 and 77203.5 which provided:

**"Section 77203. Reimbursement pursuant to chapter in lieu of other payments**

Reimbursement to an option county pursuant to this chapter shall be in lieu of any payment for any prior or current program for which reimbursement of state-mandated local programs for the trial courts is claimed, and any payment as provided in Section 77203.5. No claim for reimbursement of a state-mandated local program may be made by an option county for any cost of court operations, nor may any claim be made for state-mandated local programs arising from the enactment of the Trial Court Realignment and Efficiency Act of 1991 (Chapter 90 of the Statutes of 1991) as revised by Chapter 189 of the Statutes of 1991."



### **"Section 77203.5. Initial decision to opt into system; waiver of claims**

(a) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver.

(b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987."

It should be noted that Chapter 850, Statutes of 1997 repealed but did not replace the (above) waiver provisions. In the case of a county seeking reimbursement for court operations, county reimbursement was no longer applicable as these court operations were now part of a State agency. In the case of a county seeking reimbursement for non-court operations, the waiver for seeking trial court block State funding was not replaced because, under the new financing scheme, all such State funding to counties was discontinued<sup>1</sup>.

Therefore, claimants are not barred from obtaining complete reimbursement of their State mandated costs as claimed herein.

### **8. Costs Mandated by the State**

Counties have unavoidably incurred costs in providing new State-mandated services as previously detailed herein. Such county costs are reimbursable as "costs mandated by the State" as there is no bar or disclaimer to such a finding, as previously discussed, and

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<sup>1</sup> As noted by Mark T. Willman, in his review (cited above), on page 2, "[a]new Government Code Section 77200 provides that as of July 1, 1997, the state shall assume sole responsibility for the funding of court operations, as defined by court rule on July 1, 1996 and by statute".

because such costs satisfy three requirements, found in Government Code Section 17514:

1. There are "increased costs which a local agency is required to incur after July 1, 1980"; and
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975"; and
3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of above requirements for finding "costs mandated by the State" are met herein.

The first two requirements are met. First, local government began incurring costs for the subject services as a result of Chapter 698, Statutes of 1998 [passed on September 22, 1998 and became effective on January 1, 1999] and Chapter 701, Statutes of 1998 [passed on September 22, 1998 and became effective on January 1, 1999] well after July 1, 1980.

Second, both Chapter 698, Statutes of 1998 and Chapter 701, Statutes of 1998 were enacted on September 22, 1998 well after January 1, 1975.

The third requirement is also met. As previously detailed herein, the subject law imposed new duties on local government.

Therefore, the County's costs in implementing Chapter 698, Statutes of 1998 and Chapter 701, Statutes of 1998 are reimbursable "costs mandated by the State" and should be paid as claimed herein.



ALAN T. SASAKI  
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
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**County of Los Angeles - Test Claim  
Chapter 698, Statutes of 1998  
Amending Penal Code Sections 264.2 and 13701  
Chapter 701, Statutes of 1998  
Amending Penal Code Sections 13701 and 13519  
Domestic Violence Arrests and Victim Assistance**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, and for proposing parameters and guidelines (Ps&Gs) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the attached filing with the Commission on State Mandates.

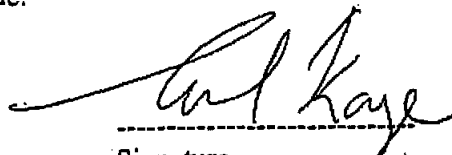
Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the attached filing, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

5/21/99; Los Angeles, CA  
Date and Place

  
Signature

**County of Los Angeles - Test Claim**  
**Chapter 698, Statutes of 1998**  
**Amending Penal Code Sections 264.2 and 13701**  
**Chapter 701, Statutes of 1998**  
**Amending Penal Code Sections 13701 and 13519**  
**Domestic Violence Arrests and Victim Assistance**

**Declaration of Bernice K. Abram**

Bernice K. Abram makes the following declaration and statement under oath:

I, Bernice K. Abram, Deputy, and Director of the Family Violence Project, Sheriff's Department, County of Los Angeles, am responsible for developing and implementing methods and procedures to comply with new State-mandated requirements, including responding to domestic violence calls, determining the primary aggressor pursuant to arrest, and providing victim assistance.

I declare that Chapter 698, Statutes of 1998, amending Penal Code sections 264.2 and 13701 and Chapter 701, Statutes of 1998, amending Penal Code sections 13701 and 13519, now requires law enforcement agencies to provide additional services, not required under prior law.

I declare that the Legislative Counsel's Digest of Chapter 698, Statutes of 1998 indicates that: "[t]his bill would expand the group of victims entitled to receive the domestic violence card to include victims of an alleged battery or corporal injury on a domestic partner..."; "[t]his bill would expand the group of victims entitled to receive the domestic violence card to include victims of battery or corporal injury on a spouse or a domestic partner..."; "... the card include the additional statement that battery and corporal injury on a spouse or domestic partner is a crime"; and, that "[b]y expanding the duties of local law enforcement officials, this bill would create a state-mandated local program".

I declare that the Legislative Counsel's Digest of Chapter 701, Statutes of 1998 indicates that: "[t]his bill would require ... training ... to include the techniques for recognizing the signs of domestic violence"; "[t]his bill would add to the list of responses required to be included in ... [policies and standards for officers' responses to domestic violence calls:] .... (1) transportation of domestic violence victims and children to a hospital for treatment when necessary and (2) police standbys for assisting a domestic violence victim with the removal of personal property and safe passage out of their residences"; and, that "[b]y increasing the duties of local officials, this bill would create a state-mandated local program".

Specifically, I declare that Penal Code section 264.2 as amended Chapter 698, Statutes of 1998 requires that two new groups of victims (of Penal Code sections 273.5 and 243(e)), in addition to the prior (and continuing) group of victims (of Penal Code sections 261, 261.5, 262, 286, 288a, and 289) must now be provided with a victim of domestic violence and/or rape card and services.

I further declare, that Penal Code section 13701 as amended by Chapter 698, Statutes of 1998 and Chapter 701, Statutes of 1998 specifically states new requirements, in bold print below, in subparagraph (G) of paragraph (9) of Section 13701 of the Penal Code:

(D) **A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229.**

(H)(i) **The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.**

(H)(iv) **A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.**

Regarding domestic violence arrests, I declare that Penal Code section 13701(c)(7), as amended by both Chapter 698, Statutes of 1998 and Chapter 701, Statutes of 1998, states new requirements, in bold print below:

**Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.**

Regarding determining the primary aggressor pursuant to arrest, I declare that Penal Code section 13519(c)(5) requires that training on "[t]he signs of domestic violence" be provided in the basic training for law enforcement officers and, I believe, also as a part of mandatory updated refresher training as set forth under section Penal Code section 13519(g) which provides, in pertinent part, that "[e]ach law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence complete, every two years, an updated course of instruction on domestic violence."

It is my information or belief that the methods and manner of compliance with the newly mandated requirements, set forth above, may vary from jurisdiction to jurisdiction and that the average or standard times for Los Angeles County's performance of its newly mandated duties, set forth below, may not be typical for all jurisdictions:

It is my information or belief that the average or standard times that Los Angeles County Sheriff deputies are now required to routinely spend on performing new State-mandated duties under the subject law, as set forth above, are as follows:

1. Victim Information

- A. California victims' compensation, 2 minutes per call.
- B. Local shelters for battered women, 8 minutes per call.
- C. Telephone numbers for local shelters and rape victim counseling centers, 2 minutes per call.
- D. Domestic violence-by-spouse statement, 2 minutes per call.

2. Emergency Assistance

- A. To children in providing medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence, 10 minutes per call.
- B. To victims in providing transportation to a hospital for treatment when necessary and assisting in safe passage out of the victim's residence, 5 minutes per call.

3. Training (for officers specified in Penal Code section 13519(g))

- A. New victim information, 5 minutes per officer.
- B. New emergency assistance, 10 minutes per officer.
- C. Signs of domestic violence, 15 minutes per officer .

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury that under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein state as information or belief, and as to those matters I believe them to be true.

05-07-99 Los Angeles, California  
Date and Place

Bruce K. Adams  
Signature

**County of Los Angeles - Test Claim**  
**Chapter 698, Statutes of 1998**  
**Amending Penal Code Sections 264.2 and 13701**  
**Chapter 701, Statutes of 1998**  
**Amending Penal Code Sections 13701 and 13519**  
**Domestic Violence Arrests and Victim Assistance**

**Declaration of Martha Y. Zavala**

Martha Y. Zavala makes the following declaration and statement under oath:

I, Martha Y. Zavala, Assistant Director, Fiscal Administration, Office of Administrative Services, Sheriff's Department, County of Los Angeles, am responsible for fiscal management and administration, including recovering County costs incurred in performing State-mandated programs, and for determining State-mandated County costs unavoidably resulting from the subject law.

I declare that Chapter 698, Statutes of 1998, amending Penal Code sections 264.2 and 13701 and Chapter 701, Statutes of 1998, amending Penal Code sections 13701 and 13519, now requires law enforcement agencies to provide additional services, not required under prior law.

I declare that the Legislative Counsel's Digest of Chapter 698, Statutes of 1998 indicates that: "[t]his bill would expand the group of victims entitled to receive the domestic violence card to include victims of an alleged battery or corporal injury on a domestic partner..."; "[t]his bill would expand the group of victims entitled to receive the domestic violence card to include victims of battery or corporal injury on a spouse or a domestic partner..."; "... the card include the additional statement that battery and corporal injury on a spouse or domestic partner is a crime"; and, that "[b]y expanding the duties of local law enforcement officials, this bill would create a state-mandated local program".

I declare that the Legislative Counsel's Digest of Chapter 701, Statutes of 1998 indicates that: "[t]his bill would require ... training ... to include the techniques for recognizing the signs of domestic violence"; "[t]his bill would add to the list of responses required to be included in ... [policies and standards for officers' responses to domestic violence calls] .... (1) transportation of domestic violence victims and children to a hospital for treatment when necessary and (2) police standbys for assisting a domestic violence victim with the removal of personal property and safe passage out of their residences"; and, that "[b]y increasing the duties of local officials, this bill would create a state-mandated local program".

Specifically, I declare that Penal Code section 264.2 as amended Chapter 698, Statutes of 1998 requires that two new groups of victims (of Penal Code sections 273.5 and 243(e)), in addition to the prior (and continuing) group of victims (of Penal Code sections 261, 261.5, 262, 286, 288a, and 289) must now be provided with a victim of domestic violence and/or rape card and services.



I further declare, that Penal Code section 13701 as amended by Chapter 698, Statutes of 1998 and Chapter 701, Statutes of 1998 specifically states new requirements, in bold print below, in subparagraph (G) of paragraph (9) of Section 13701 of the Penal Code:

- (D) **A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229.**
- 

- (H)(i) **The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.**
- 

- (H)(iv) **A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.**

Regarding domestic violence arrests, I declare that Penal Code section 13701(c)(7), as amended by both Chapter 698, Statutes of 1998 and Chapter 701, Statutes of 1998, states new requirements, in bold print below:

**Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.**

Regarding determining the primary aggressor pursuant to arrest, I declare that Penal Code section 13519(c)(5) requires that training on "[t]he signs of domestic violence" be provided in the basic training for law enforcement officers and, I believe, also as a part of mandatory updated refresher training as set forth under section Penal Code section 13519(g) which provides, in pertinent part, that "[e]ach law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence complete, every two years, an updated course of instruction on domestic violence ...".

I believe that Los Angeles County has incurred costs in complying with the subject law. Such costs are estimated for the period January 1, 1999 through June 30, 1999 in Schedule A, attached.

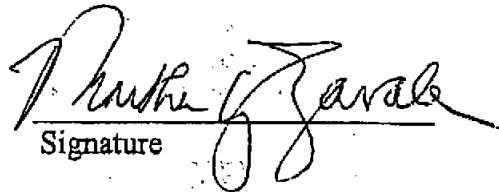
Specifically, I believe that Los Angeles County's costs, incurred in performing mandated duties set forth in the subject law and not required under prior law, should be reimbursed to the County by the State as these costs clearly fall within the definition of "costs mandated by the State", found in Government Code section 17514:

"Costs mandated by the State" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein state as information or belief, and to those matters I believe them to be true.

5/7/99 Monterey Park, CA  
Date and Place

  
Signature

## SCHEDULE A

**Estimated Costs: January 1, 1999 - June 30, 1999**

### A. One-Time Costs

- |                                                                |         |
|----------------------------------------------------------------|---------|
| (1) Updating policies and procedures<br>[40 hours @ \$56/hour] | \$2,240 |
| (2) Modifying record-keeping systems<br>[20 hours @ \$50/hour] | \$1,000 |

### B. Continuing Costs

- |                                                                               |         |
|-------------------------------------------------------------------------------|---------|
| (1) Printing new domestic violence/rape cards<br>[20,000 cards @ \$ .40/card] | \$8,000 |
| (2) Victim Information [Note 1]                                               |         |
| (a) Victim compensation                                                       | \$1,632 |
| (b) Battered women shelters                                                   | \$6,528 |
| (c) Counseling center, other telephone numbers                                | \$1,632 |
| (d) Domestic Violence-by-spouse statement                                     | \$1,632 |
| (3) Emergency Assistance [Note 2]                                             |         |
| (a) Children                                                                  | \$765   |
| (b) Victims                                                                   | \$383   |
| (4) Training [Note 3]                                                         |         |
| (a) New victim information                                                    | \$2,550 |
| (b) New emergency assistance                                                  | \$5,100 |
| (c) Signs of domestic violence                                                | \$7,650 |

Note (1) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 960 specified calls for the period January 1, 1999 through June 30, 1999.

Note (2) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 90 specified calls for the period January 1, 1999 through June 30, 1999.

Note (3) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 600 officers receiving training in the period January 1, 1999 through June 30, 1999.

Assembly Bill No. 1201

CHAPTER 698

An act to amend Sections 264.2 and 13701 of the Penal Code, relating to domestic violence.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1201, Murray. Domestic violence.

(1) Existing law requires law enforcement officers to provide sexual assault victims with a "Victims of Domestic Violence" card bearing specified information.

This bill would expand the group of victims entitled to receive the domestic violence card to include victims of an alleged battery or corporal injury on a domestic partner.

(2) Existing law requires every law enforcement agency in this state to develop, adopt, and implement written policies and standards governing officer responses to domestic violence calls. Pursuant to this mandate, those policies must require that written notice of specified information be furnished to victims at the scene. The information includes a "Victims of Domestic Violence" card that must provide specified information including a statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

This bill would expand the list of victims that must be furnished the domestic violence card to include victims of battery or corporal injury on a spouse or domestic partner. The bill would also require that the card include the additional statement that battery and corporal injury on a spouse or domestic partner is a crime.

By expanding the duties of local law enforcement officials, this bill would create a state-mandated local program.

(3) This bill would incorporate additional changes in Section 264.2 of the Penal Code proposed by AB 1115, to be operative if AB 1115 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

(4) This bill also would incorporate additional changes in Section 13701 of the Penal Code proposed by AB 2172 and AB 2177, to be operative if this bill and one or both of the other bills are enacted and become effective on or before January 1, 1999, and this bill is enacted last.

(5) 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 that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 264.2 of the Penal Code is amended to read:

264.2. (a) Whenever there is an alleged violation of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

(b) (1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, and at least one other support person of the victim's choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the attending medical provider that the victim has the right to have present a sexual assault victim counselor and at least one other support person of the victim's choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

SEC. 1.5. Section 264.2 of the Penal Code is amended to read:

264.2. (a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

(b) (1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical

evidentiary or physical examination. The victim shall have the right to have a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, and a support person of the victim's choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the medical provider that the victim has the right to have present a sexual assault victim counselor and at least one other support person of the victim's choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

(4) A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

SEC. 2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
  - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
  - (B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."
  - (C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."
  - (D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."
  - (E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.
  - (F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
    - (i) An order restraining the attacker from abusing the victim and other family members.
    - (ii) An order directing the attacker to leave the household.
    - (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
    - (iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.
    - (v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
    - (vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
    - (vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.
    - (viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of 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.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 2.1. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary



aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
  - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
  - (B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."
  - (C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."
  - (D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."
  - (E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.
  - (F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
    - (i) An order restraining the attacker from abusing the victim and other family members.
    - (ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of 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.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 2.2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
  - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
  - (B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."

(C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of 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.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 2.3. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when

necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."

(C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of 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.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local

shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 3. 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 one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 264.2 of the Penal Code proposed by both this bill and AB 1115. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 264.2 of the Penal Code, and (3) this bill is enacted after AB 1115, in which case Section 1 of this bill shall not become operative.

SEC. 5. (a) Section 2.1 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and AB 2172. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 2177 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2172, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and AB 2177. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section

13701 of the Penal Code, (3) AB 2172 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2177, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by this bill, AB 2172, and AB 2177. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 2172 and AB 2177, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.



Assembly Bill No. 2172

CHAPTER 701

An act to amend Sections 13519 and 13701 of the Penal Code, relating to domestic violence.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2172, Sweeney. Domestic violence: officer response.

Existing law requires the Commission on Peace Officer Training to implement a training course for law enforcement officers in the handling of domestic violence complaints and to develop guidelines for officer response to domestic violence. The course must include instruction on specified procedures and techniques.

This bill would require the above described training course to include the techniques for recognizing the signs of domestic violence.

Existing law requires every law enforcement agency in this state to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls. The policies are required to include standards for specified responses, including emergency assistance to victims, such as medical care, transportation to a shelter and police standbys for removing personal property, and notice to victims of specified information.

This bill would add to the list of responses required to be included in the above-summarized policies (1) transportation of domestic violence victims and children to a hospital for treatment when necessary and (2) police standbys for assisting a domestic violence victim with the removal of personal property and safe passage out of their residences. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The bill would incorporate additional changes to Section 13701 of the Penal Code made by AB 1201 and AB 2177 to be operative if this bill and one or both of the other bills are enacted and become effective on or before January 1, 1999, and this bill is enacted last.

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 that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

**SECTION 1.** Section 13519 of the Penal Code is amended 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.

(b) As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (b) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (c) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

(c) 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 signs of domestic violence.

(6) The legal rights of, and remedies available to, victims of domestic violence.

(7) The use of an arrest by a private person in a domestic violence situation.

- (8) Documentation, report writing, and evidence collection.
  - (9) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.
  - (10) Tenancy issues and domestic violence.
  - (11) The impact on children of law enforcement intervention in domestic violence.
  - (12) The services and facilities available to victims and batterers.
  - (13) The use and applications of this code in domestic violence situations.
  - (14) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
  - (15) Verification and enforcement of stay-away orders.
  - (16) Cite and release policies.
  - (17) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.
- (d) The guidelines developed by the commission shall also incorporate the foregoing factors.
- (e) (1) 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.
- (2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.
- (3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.
- (B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.
- (C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.
- (4) Local law enforcement agencies are encouraged to include, as a part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.
- (f) (1) 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;

o 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.

(2) 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.

(g) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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 request for assistance where violence has occurred.

The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense.

These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
  - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
  - (B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."
  - (C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."
  - (D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.
  - (E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
    - (i) An order restraining the attacker from abusing the victim and other family members.
    - (ii) An order directing the attacker to leave the household.
    - (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
    - (iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.
    - (v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
    - (vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(F) A statement informing the victim of 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.

(G) In the case of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 2.1. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an

officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
  - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
  - (B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."
  - (C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."
  - (D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."
  - (E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.
  - (F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
    - (i) An order restraining the attacker from abusing the victim and other family members.
    - (ii) An order directing the attacker to leave the household.
    - (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of 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.

(H) In the case of an alleged violation of Subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 2.2. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.



(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims and children, such as medical care, transportation to a shelter or a hospital for treatment when necessary, and police standbys for removing personal property and assisting in safe passage out of the victim's residence.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
  - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
  - (B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."

(C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_."

(D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(F) A statement informing the victim of 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.

(G) In the case of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 2.3. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for



(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."

(C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of 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.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 3. (a) Section 2.1 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and Assembly Bill No. 1201. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) Assembly Bill No. 2177 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1201, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and Assembly Bill No. 2177. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) Assembly Bill No. 1201 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2177, in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2177. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201 and AB 2177, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 4. 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 one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

# RAPE VICTIM COUNSELING CENTER NOTICES

## 1. Summary of Chapters 999/91 and 224/92

The provisions of Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code Section 13701, as amended by Chapter 999, Statutes of 1991, require local law enforcement agencies to: Reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape victim counseling center, notify the victim-selected center, and subject to the approval of the victim and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

On July 22, 1993, the Commission on State Mandates determined that Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992, resulted in state mandated costs which are reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

## 2. Eligible Claimants

Any city or county incurring increased costs as a result of this mandate is eligible to claim reimbursement of these costs.

## 3. Appropriations

Claims may only be filed with the State Controller's Office for programs that have been funded in the state budget, the State Mandates Claims Fund, or in special legislation. Initial funding for Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, is provided for in the local government claims bill AB 818 enacted as Chapter 914, Statutes of 1995. The bill appropriated \$191,000 for payment of claims for the period 01/01/92 to 06/30/92 and for fiscal years 1992/93, 1993/94, 1994/95 and 1995/96.

To determine if this program is funded in subsequent fiscal years, refer to the schedule "Appropriations for State Mandated Cost Programs" in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September of each year to city fiscal officers and county auditors.

## 4. Types of Claims

### A. Reimbursement and Estimated Claims

A claimant may file a reimbursement claim and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

### B. Minimum Claim

Section 17564(a), Government Code, provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds \$200 per program per fiscal year.

## 5. Filing Deadline

### A. Initial Funding of a Mandate

After funds are initially provided by special legislation to reimburse costs of State mandated programs, claims are due 120 days from the date the State Controller's

Office issues claiming instructions for the program. Accordingly, claims to be filed are:

- (1) Reimbursement claims detailing the actual costs incurred for the period 01/01/92 to 06/30/92 and 1992/93, 1993/94, and 1994/95 fiscal years must be filed with the State Controller's Office and postmarked by August 19, 1996. If the reimbursement claim is filed after the deadline of August 19, 1996, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.
- (2) Estimated claims for costs to be incurred during the 1995/96 fiscal year must be filed with the State Controller's Office and postmarked by August 19, 1996. Timely filed estimated claims are paid before late claims. If a payment is received for the estimated claim, a 1995/96 reimbursement claim must be filed by November 30, 1996.

#### B. Annually Thereafter

- (1) Refer to Item 3 "Appropriations" to determine if the program is funded for the current fiscal year. If funding is available, an estimated claim must be filed with the State Controller's Office and postmarked by November 30, of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.
- (2) After having received payment for an estimated claim, the claimant must file a reimbursement claim by November 30, of the following fiscal year regardless whether the payment was more or less than the actual costs. If the local agency fails to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, the local agency may file a reimbursement claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. (See Item 3 above).

A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by November 30 following the fiscal year in which costs were incurred. If the claim is filed after the deadline but by November 30 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.

#### 6. Reimbursable Components

Local law enforcement agencies shall be reimbursed for the increased costs which they are required to incur to: Reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape counseling center, notify the victim-selected local rape counseling center, and subject to the victim's approval and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified

For each eligible claimant, the following one-time costs and continuing costs are reimbursable:

##### A. Initial One-Time Costs:

- (1) Costs of updating policies and procedures to conform with the special requirements of Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992.
- (2) Costs of modifying existing record-keeping systems to provide reliable and timely retrieval of verification information required by Chapter 224, Statutes of 1992, not to exceed \$2,000.



**B. Ongoing Costs:**

- (1) Costs of reprinting the existing "Victims of Domestic Violence" card to add information, relating to rape victim services, required by Chapter 999, Statutes of 1991, but not to exceed one reprinting per fiscal year.
- (2) Law enforcement's road officer, clerical, and dispatcher costs required to: Request each victim's consent to notify a rape counseling center, each time an alleged violation(s) includes at least one violation of Penal Code Sections 261, 261.5, 262, 286, 288a, 289, alleged separately or in combination with other violations; furnish a rape victim with a "Victims of Domestic Violence" card; record, file, and/or data-process state mandated information; and, provide hospital verification whether the local rape victim counseling center has been notified, upon the consent of the victim.

**7. Reimbursement Limitations**

Any offsetting savings or reimbursement the claimant received from any source (e.g. federal, state grants, foundations, etc.) as a result of this mandate, shall be identified and deducted so only net local costs are claimed.

**8. Claiming Forms and Instructions**

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms RVC-1, RVC-2 and form RVC-2.1 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated and reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

**A. Form RVC-2.1 Component/Activity Cost Detail**

This form is used to detail the cost of assisting the rape victims and notifying a local rape victim counseling center. Costs reported on this form must be supported as follows:

- (1) Salaries and Benefits
  - (a) For ongoing costs, excluding reprinting costs, unit costs must be claimed for each specified victim, based on the following standard times:
    - (1) 10 minutes—road officer's time related to the subject state mandates
    - (2) 4 minutes—clerical's duties related to recording, filing and/or data processing
    - (3) 2 minutes—dispatcher's time related to hospital verification

Each standard time is multiplied by the average productive hourly rate, including applicable indirect cost for road officers, clerical staff and dispatchers assigned state mandated duties and the results totaled to obtain a reimbursable unit cost. Such reimbursable unit cost is then multiplied by the total number of reported incidents regarding alleged violations.

The standard times set forth herein shall remain in effect through June 30, 1996. For the reimbursement period following June 30, 1996, the Commission on State Mandates, at a public hearing, shall review these standard times and shall make any necessary revisions to the standard times set forth herein.

**B. Form RVC-2 Component/Activity Cost Detail**

This form is used to segregate the detail costs by claim component. A separate form RVC-2 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

**(1) Salaries and Benefits**

For one-time costs and reprinting costs, identify the employee(s) and/or show, the classification of the employee(s) involved. Describe the mandated functions performed by each employee, and specify the actual time spent, productive hourly rate and related fringe benefits.

Source documents required to be maintained by the claimant may include, but are not limited to, employee time records that show the employee's actual time spent on the mandate.

**(2) Office Supplies**

These charges are allowed only for one-time costs and reprinting costs. Claimed expenditures must be identified with a direct cost reimbursable activity resulting from the subject state mandates. List the cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders and other documents evidencing the validity of the expenditures.

**(3) Contracted Services**

Charges are allowed only for one-time costs and reprinting costs. List costs incurred for contract services for the subject state mandate. Contracting costs are reimbursable to the extent that the function performed requires special skills or knowledge that is not readily available from the claimant's staff. Use of contract services must be justified by the claimant.

Give the name of the contractor(s) who performed the services. Describe the activities performed by each named contractor, actual time spent on the mandate, inclusive dates when services were performed and itemize all costs for services performed. Attach consultant invoices with the claim.

Source documents required to be maintained by the claimant may include, but are not limited to, contracts, invoices and other documents evidencing the validity of the expenditures.

For audit purposes, all supporting documents must be retained for a period of four years after the end of the calendar year in which the reimbursement claim was filed or last amended. Effective July 1, 1996, the document retention period is two years after the end of the calendar year in which the reimbursement claim was filed or last amended. Such documents shall be made available to the State Controller's Office on request.

**C. Form RVC-1, Claim Summary**

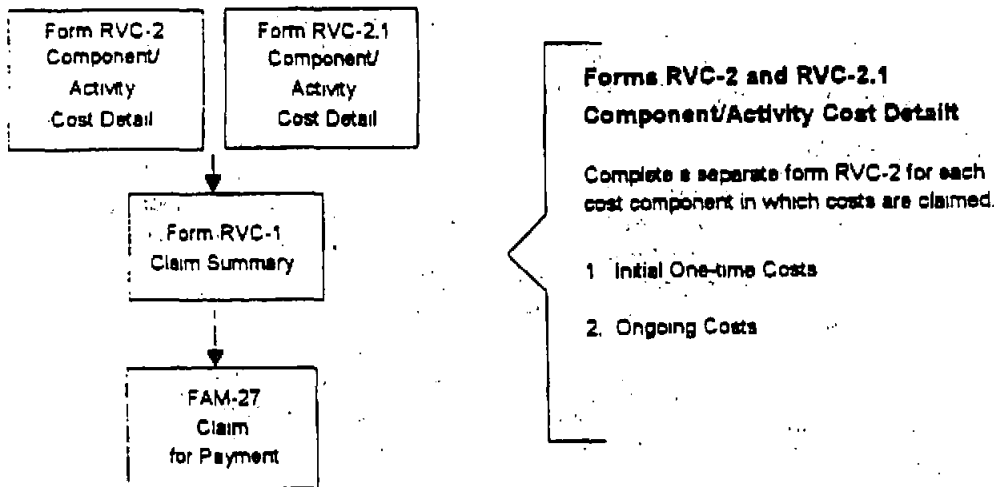
This form is used to summarize direct costs by claim component and compute allowable indirect costs for the mandate. Claim statistics shall identify the amount of work performed during the claim period for which costs are claimed. The claimant must provide the number of rape victims who received information assistance from law enforcement personnel. Direct costs summarized on this form are derived from forms RVC-2 and RVC-2.1 and are carried forward to form FAM-27.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have their own ICRP.

**D. Form FAM-27, Claim for Payment**

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form RVC-1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

**Illustration of Claim Forms**



**CLAIM FOR PAYMENT**

Pursuant to Government Code Section 17561

**RAPE VICTIM COUNSELING CENTER NOTICES**

For State Controller Use Only

(19) Program Number 00127  
 (20) Date File \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 (21) LRS Input \_\_\_\_\_

I  
L  
R  
E

(01) Claimant Identification Number	Reimbursement Claim Data	
(02) Mailing Address	(22) RVC-1, (03)	
Claimant Name	(23) RVC-1, (04)(1)(d)	
County of Location	(24) RVC-1, (04)(2)(d)	
Street Address or P O Box	(25) RVC-1, (06)	
City State Zip Code	(26) RVC-1, (08)	

Type of Claim	Estimated Claim	Reimbursement Claim	(27)
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(28)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(29)
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(30)
Fiscal Year of Cost	(06) 19__/__	(12) 19__/__	(31)
Total Claimed	(07)	(13)	(32)
Less 10% Late Penalty, but not to exceed \$1000 (if applicable)		(14)	(33)
Less Estimated Claim payment Received		(15)	(34)
Net Claimed Amount		(16)	(35)
Due from State	(08)	(17)	(36)
Due to State		(18)	(37)

**(38) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application for nor any grant or payment received, other than from the claimant, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, set forth on the attached statements.

Signature of Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

Type or Print Name \_\_\_\_\_ Title \_\_\_\_\_

(39) Name of Contact Person for Claim \_\_\_\_\_ Telephone Number (\_\_\_\_) \_\_\_\_\_ Ext. \_\_\_\_\_

**RAPE VICTIM COUNSELING NOTICE**  
**Certification Claim Form**  
**Instructions**

**FORM**  
**FAM-27**

- (01) Leave blank
- (02) A set of mailing labels with the claimant's I.D. number and address has been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors. Affix a label in the space shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.
- (03) If filing an original estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.
- (05) If filing an amended or combined claim, enter an "X" in the box on line (05) Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of estimated claim. If the estimate exceeds the prior year's actual by 10%, complete form RVC-1 and enter the amount from line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form RVC-1.
- (08) Enter the same amount as shown in line (07).
- (09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of reimbursement claim from form RVC-1, line (11). If more than one form RVC-1 is completed due to multiple department involvement in this mandate, add line (11) of each form RVC-1.
- (14) Filing Deadline: Initial Claims of Ch. 999/91 and 224/92. If the reimbursement claim for the period (i.e., 01/01/92 to 06/30/92, 1993/94 or 1994/95) is filed after August 19, 1996, the claim must be reduced by late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- Filing Deadline: Annually Thereafter. If the reimbursement claim is filed after November 30 following the fiscal year in which costs were incurred, the claim must be reduced by late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- (15) If filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16) Net Claimed Amount is positive, enter that amount on line (17) Due from State.
- (18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.
- (19) through (21) for State Controller's use only. Leave blank.
- (22) through (37) for the Reimbursement Claim. Bring forward the cost information as specified on the left-hand column of lines (22) through (26) for the reimbursement claim (e.g., RVC-1 (3), means the information is located on form RVC-1, line (3)). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). The claim cannot be processed for payment unless this data block is correct and complete.
- (38) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.
- (39) Enter the name of the person and telephone number that this office should contact if additional information is required.

**SUBMIT A SIGNED ORIGINAL AND A COPY OF FORM FAM-27, AND A COPY OF ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:**

*Address, if delivered by U.S. Postal Service:*

OFFICE OF THE STATE CONTROLLER  
 ATTN: Local Reimbursement  
 Division of Accounting and Reporting  
 P.O. Box 942850  
 Sacramento, CA 94280-5875

*Address, if delivered by other delivery service:*

OFFICE OF THE STATE CONTROLLER  
 ATTN: Local Reimbursement  
 Division of Accounting and Reporting  
 3301 C Street, Suite 600  
 Sacramento, CA 95816

<b>MANDATED COSTS</b> <b>RAPE VICTIM COUNSELING CENTER NOTICES</b> <b>CLAIM SUMMARY</b>	<b>FORM</b> <b>RVC-1</b>
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(01) Claimant	(02) Type of Claim	Fiscal Year
	Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	19__/__/__

**Claim Statistics**

(03) Number of rape victims involved in at least one alleged violation of Penal Code Sections 261, 261.5, 262, 288a, or 289 for the claim year.

Direct Costs	Object Accounts			
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(04) Reimbursable Components:	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Total
1 Initial One-time Costs				
2 (a) Ongoing Costs (From RVC - 2)				
(b) Ongoing Costs (From RVC-2.1)				

(05) Total Direct Costs

**Indirect Costs**

(06) Indirect Cost Rate [From ICRP] %

(07) Total Indirect Costs [Line (06) x line (05)(a)] or [line (06) x {line (05)(a) + line (05)(b)}]

(08) Total Direct and Indirect Costs: [Line (05)(d) + line (07)]

**Cost Reduction**

(09) Less: Offsetting Savings, if applicable

(10) Less: Other Reimbursements, if applicable

(11) Total Claimed Amount [Line (08) - {Line (09) + Line (10)}]

**RAPE VICTIM COUNSELING CENTER NOTICES**  
**CLAIM SUMMARY**  
**Instructions**

FORM  
RVC-1

- (01) Enter the name of the claimant. If more than one department has incurred costs for this mandate, give the name of each department. A form RVC-1 should be completed for each department.
- (02) Type of Claim: Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.
- Form RVC-1 must be filed for a reimbursement claim. Do not complete form RVC-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07), Estimated. However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form RVC-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Enter the number of rape victims involved in at least one alleged violation of Penal Code Section 261, 261.5, 262, 288a, or 289 for the claim year.
- (04) Reimbursable Components. For each reimbursable component, enter the totals from form RVC-1, line (05) columns (d), (e) and (f) to form RVC-1, block (04) columns (a), (b) and (c) in the appropriate row. Total each row.
- (05) Total Direct Costs. Total columns (a) through (d).
- (06) Indirect Cost Rate. Enter the indirect cost rate. Indirect costs may be computed as 10% of direct costs, excluding fringe benefits. If an indirect cost rate greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have their own ICRP for the program.
- (07) Total Indirect Costs. Multiply Total Salaries, line (05)(a) by the Indirect Cost Rate, line (06). If both Salaries and Benefits were used in the distribution base for the computation of the indirect cost rate, then multiply total Salaries and Benefits, line (05)(a) and line (05)(b) by the Indirect Cost Rate, line (06).
- (08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(d) and Total Indirect Costs, line (07).
- (09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (10) Less: Other reimbursements, if applicable. Enter the amount of other reimbursements received from any source (i.e., federal, state grants, foundations, etc.) which reimbursed any portion of the mandated program. Submit a schedule detailing the reimbursement sources and amounts.
- (11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09) and Other Reimbursements, line (10) from Total Direct and Indirect Costs, line (08). Enter the remainder on this line and carry forward the amount to form FAM-27, line (07) for the Estimated Claim, or line (13) for the Reimbursement Claim.

<b>MANDATED COSTS</b> <b>RAPE VICTIM COUNSELING CENTER NOTICES</b> <b>COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>RVC-2</b>
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(01) Claimant: \_\_\_\_\_ (02) Fiscal Year Costs Were Incurred: \_\_\_\_\_

(03) Reimbursable Components: Check only one box per form to identify the component being claimed

1. Initial One-time Costs
2. Ongoing Costs (Reprinting of Cards)

(04) Description of Expenses: Complete columns (a) through (f). Object Accounts

(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies

(05) Total: \_\_\_\_\_ Subtotal: \_\_\_\_\_ Page: \_\_\_\_\_ of \_\_\_\_\_



<b>RAPE VICTIMS COUNSELING CENTER NOTICE</b> <b>COMPONENT/ACTIVITY COST DETAIL</b> Instructions	<b>FORM</b> <b>RVC-2</b>
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year for which costs were incurred.
- (03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form RVC-2 shall be prepared for each component which applies.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in line (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, etc. All supporting documents must be retained by the claimant for a period of four years after the end of the calendar year in which the reimbursement claim was filed or last amended. Effective July 1, 1996, the document retention period is two years after the end of the calendar year in which the reimbursement claim was filed or last amended. Such documents shall be made available to the State Controller's Office on request.

Object/ Sub-object Accounts	Columns						Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	
Salaries	Employee Name	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked			
Benefits	Title	Benefit Rate		Salaries	Benefits = Benefit Rate x Salaries		
	Activities Performed						
Services and Supplies						Cost = Unit Cost x Quantity Consumed	
Office Supplies	Description of Supplies Used	Unit Cost	Quantity Used				
Contracted Services	Name of Contractor	Hourly Rate	Hours Worked			Reimposed Cost for Services Performed	Invoice
	Specific Tasks Performed		Inclusive Dates of Service				

- (05) Total line (04), columns (d), (e) and (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from line (05), columns (d), (e) and (f) to form RVC-1, block (04), line (01) or line (02)(a), columns (a), (b) and (c) in the appropriate row.

**MANDATED COSTS  
RAPE VICTIM COUNSELING CENTER NOTICES  
COMPONENT/ACTIVITY COST DETAIL**

**FORM  
RVC-2.1**

(01) Claimant

(02) Fiscal Year Costs Were Incurred

(03) Reimbursable Component: Ongoing Costs: Rape victims involved in at least one alleged violation of Penal Code Sections 261, 261.5, 262, 268a, or 269 for the claim year

(04) Description of Expenses: Complete (a) through (f)

**Object Accounts**

(a) Standard Time (Hour/Victim)	(b) No. of Victims	(c) Total Time (Hours) (a x b)	(d) Hourly Rate	(e) Salaries (c x d)	(f) Fringe Benefits
Road Officers (10 min/victim) List job classification(s)					
0.166 Hrs.					
1					
2					
3					
* Total Cases					
Clencals (4 min/victim)					
0.066 Hrs.					
1					
2					
3					
* Total Cases					
Dispatchers (2 min/victim)					
0.033 Hrs.					
1					
2					
3					
* Total Cases					
*Total victims not to exceed RVC-1, line (03)					

(05) Total

Subtotal

Page

of

**RAPE VICTIM COUNSELING CENTER NOTICES  
COMPONENT/ACTIVITY COST DETAIL  
Instructions**

FORM  
RVC-2.1

- (01) Enter the name of the claimant.
- (02) Enter the fiscal year for which costs were incurred.
- (03) Reimbursable Component. This line identifies the activity for which costs may be claimed on form RVC-1.
- (04) Description of Expenses. Complete columns (a) through (f).
- Column (a): Road officers, clericals and dispatchers must be listed by job classification(s). Road officers are allowed ten minutes or 0.166 hours per victim for time related to the state mandate. Clericals are allocated four minutes or 0.066 hours per victim for time related to recording, filing, and/or data processing. Dispatchers are allowed two minutes or 0.033 hours per victim for time related to notification of the local rape victim counseling center by the hospital.
- Column (b) Enter the number of victims assisted by employees at each job classification. The total number of victims not exceed the number of victims shown on form RVC-1, line (03).
- Column (c) Enter the result of multiplying the standard time by the number of victims to arrive at the total time in hours.
- Column (d) Enter the hourly rate by job classification.
- Column (e) Enter the result of multiplying the total time in hours by the hourly rate to arrive at the total salaries.
- Column (f) Enter the result of multiplying the fringe benefit rate by total salaries to arrive at the amount for fringe benefits..
- (05) Total line (04) columns (e) and (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from line (05), columns (e) and (f) to form RVC-1, block (04) line (02)(b), columns (a) and (b).

# DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS

## 1. Summary of the Mandate

Chapter 246, Statutes of 1995, added a new subdivision (b) to Penal Code section 13701. Subdivision (b) requires the development, adoption, and implementation of written arrest policies for domestic violence offenders by July 1, 1996. Further, under subdivision (b), a local agency is required to obtain input from local domestic violence agencies in developing the arrest policies.

Previously, local agencies were required to develop, adopt, and implement written policies for response to domestic violence calls and were encouraged, but not obligated, to consult with domestic violence experts.

On September 25, 1997, the Commission adopted its Statement of Decision finding that Penal Code section 13701, subdivision (b), as added by Chapter 246, Statutes of 1995, imposed a reimbursable state mandated program upon local law enforcement agencies within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code.

## 2. Eligible Claimants

Any city, county, or city and county, employing law enforcement officers and incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

## 3. Appropriations

These claiming instructions are issued following the adoption of the program's parameters and guidelines by the Commission on State Mandates. Funding for payment of initial claims covering the period January 1, 1996, through June 30, 1996, and fiscal years 1996-97, 1997-98, and 1998-99, may be made available in a future appropriation subject to approval of the Legislature and the Governor.

To determine if this program is funded in subsequent fiscal years, refer to the schedule "Appropriations for State Mandated Cost Programs" in the *Annual Claiming Instructions for State Mandated Costs* issued in October of each year to city fiscal officers, and county auditors.

## 4. Types of Claims

### A. Reimbursement and Estimated Claims

A claimant may file a reimbursement and/or an estimated claim. A reimbursement claim details the cost actually incurred for a prior fiscal year. An estimated claim shows the cost to be incurred for the current fiscal year.

### B. Minimum Claim

Section 17564(a) of the Government Code provides that no claim shall be filed pursuant to section 17561 unless such a claim exceeds \$200 per program per fiscal year. However, any county, as fiscal agent for local agencies, may submit a combined claim in excess of \$200 on behalf of two or more agencies within the county even if the individual agency's claim does not exceed \$200. A combined claim must show the individual claim costs for each local agency. Once a combined claim is filed, all subsequent fiscal years relating to

the same mandate must be filed in a combined form. The county receives the reimbursement payment and is responsible for disbursing funds to each participating agency. An agency may withdraw from the combined claim form by providing the county and the State Controller's Office with a written notice of its intent to file a separate claim at least 180 days prior to the deadline for filing the claim. Claims should be rounded to the nearest dollar.

## 5. Filing Deadline

### A. Initial Claims

Pursuant to Government Code section 17561, subdivision (d)(3), initial claims must be filed within 120 days from the issuance date of the claiming instructions. Accordingly:

- (1) Reimbursement claims detailing the actual costs incurred for the period January 1, 1996, through June 30, 1996, and fiscal years 1996-97 and 1997-98 must be filed with the State Controller's Office and postmarked by February 24, 1999. If the reimbursement claim is filed after the deadline of February 24, 1999, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.
- (2) Estimated claims for costs to be incurred during the 1998-99 fiscal year must be filed with the State Controller's Office and postmarked by February 24, 1999. Timely filed estimated claims are paid before late claims. If a payment is received for the estimated claim, a 1998-99 reimbursement claim must be filed by January 15, 2000.

### B. Annually Thereafter

Refer to the item "Reimbursable State Mandated Cost Programs" contained in the cover letter for mandated cost programs issued annually in October, which identifies the fiscal years for which claims may be filed. If an "x" is shown for the program listed under "19\_\_ - 19\_\_ Reimbursement Claim," and/or "19\_\_ - 19\_\_ Estimated Claim," claims may be filed as follows:

- (1) An estimated claim filed with the State Controller's Office must be postmarked by January 15 of the fiscal year in which the cost will be incurred. Timely filed estimated claims will be paid before late claims.

After having received payment for an estimated claim, the claimant must file a reimbursement claim by January 15 of the following fiscal year. If the local agency fails to file a reimbursement claim, monies received for the estimated claim must be returned to the State. If no estimated claim was filed, the agency may file a reimbursement claim detailing the actual cost incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. For information regarding appropriations for reimbursement claims, refer to the "Appropriation for State Mandated Cost Programs" in the previous fiscal year's annual claiming instructions.

- (2) A reimbursement claim detailing the actual cost must be filed with the State Controller's Office and postmarked by January 15 following the fiscal year in which the cost will be incurred. If the claim is filed after the deadline but by January 15 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.

## 6. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, supplies, services, travel, and training, are reimbursable for the following activities:

**A. Initial One-Time Costs****(1) Development of Written Arrest Policies**

- (a) Meeting and conferring with "Local Domestic Violence Agencies" to obtain input in the development of the written arrest policies.
- (b) Developing written arrest policies that:
  - i. Encourage the arrest of domestic violence offenders if there is a probable cause that an offense has been committed;
  - ii. Require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with section 2040) of Part 1 of Division 6, Division 10 (commencing with section 6200), or Chapter 6 (commencing with section 7700) of Part 3 of Division 12, of the Family Code, or section 136.2 of the Penal Code, has been violated;
  - iii. Discourage, when appropriate, but not prohibit, dual arrests; and
  - iv. Require peace officers to make reasonable efforts to identify the primary aggressor in any incident. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense.

**(2) Adoption of Written Policies**

Meetings between the local law enforcement agency and appropriate local government official(s) on adoption of written policies.

**(3) Training Officers About Written Arrest Policies**

- (a) Printing and distributing the new written domestic violence arrest policies to all stations, substations, and other sites that normally respond to incidents of domestic violence.
- (b) Development of instructional aids and training materials for purposes of training local law enforcement officers who normally respond to incidents of domestic violence on the new domestic violence policies.
- (c) Training local law enforcement officers who normally respond to incidents of domestic violence on the new domestic violence policies.

**B. Ongoing Costs****Implementation of Written Arrest Policies**

Implementation of new written arrest policies is to identify the primary aggressor. The activities required to identify the primary aggressor are based on training material developed by the Commission on Peace Officers Standards and Training (POST).

Interview of both parties involved in the domestic violence incident.

Consideration of the following factors:

- (a) Size of the parties
- (b) Use of weapons
- (c) Is one party stronger than the other

- (d) Is one party specially trained in martial arts, boxing, or hand-to-hand combat techniques
- (e) Who is afraid
- (f) Who has the more serious injuries
- (g) Location and nature of injuries (offensive vs. defensive)
- (h) Did one party escalate the level of violence (push followed by serious beating)
- (i) History of abuse (is one person usually the aggressor)
- (j) Timing of the second arrest (person claimed to have been assaulted only after arrested)
- (k) Existence of court protective orders
- (l) Demeanor of the parties
- (m) Use of alcohol and drugs
- (n) Existence of corroborating evidence or witnesses
- (o) Criminal history
- (p) Other legal defenses
- (q) Indicators of defensive injuries including wounds on victim's palm(s) of hand(s); wounds on inside and outside of victim's arms; bumps on victim's head (especially the back); bite marks on perpetrator's chest, biceps, or forearms; and scratches on perpetrator's face, chest, neck (strangulation cases).

#### 7. Uniform Cost Allowance

Pursuant to Government Code section 17557, the Commission on State Mandates has adopted a uniform cost allowance for reimbursement in lieu of payment of total actual costs incurred. The uniform cost allowance is applied only to Section 6, Reimbursable Activities, Component B, Implementation of New Policies, and covers all costs (direct and indirect) of performing activities described under Component B. The uniform cost allowance provides the following:

A standard time of twenty nine (29) minutes may be claimed to identify the primary aggressor in any domestic violence incident. The standard time of twenty nine (29) minutes is broken down as follows:

- Seventeen (17) Minutes - Interview of both parties
- Twelve (12) Minutes - Consideration of the factors listed above

The total cost will be determined by multiplying the number of reported responses times the average productive hourly rate, including applicable indirect costs as specified in Section 9 F, herein, times 0.48 hour (29 minutes divided by 60 minutes).

#### 8. Reimbursement Limitations

Any offsetting savings or reimbursement the claimant received from any source including but not limited to, service fees collected, federal funds, and other state funds as a direct result of this mandate, shall be identified and deducted so only the net local cost is claimed.

## 9. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms DAPS-1 and DAPS-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated or reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

### A. Form DAPS-2, DAPS-2.1, Component/Activity Cost Detail

This form is used to segregate the detailed costs by claim component. A separate form DAPS-2 and/or DAPS-2.1 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

#### (1) Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the mandated functions performed and specify the actual time devoted to each function by each employee, productive hourly rate, and related fringe benefits.

Reimbursement of personal services include compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

Source documents may include, but are not limited to, time logs evidencing actual costs claimed under Reimbursable Activities, time sheets, payroll records, canceled payroll warrants, organization charts, duty statements, pay rate schedules, and other documents evidencing the expenditure.

#### (2) Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

Source documents may include, but are not limited to, general and subsidiary ledgers, invoices, purchase orders, receipts, canceled warrants, inventory records, and other documents evidencing the expenditure.

#### (3) Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were rendered and itemize all costs for those services. Attach consultant invoices with the claim.



Source documents may include, but are not limited to, general and subsidiary ledgers, contracts, invoices, canceled warrants, and other documents evidencing the validity of the expenditure.

(4) Fixed Assets

List the cost of fixed assets acquired specifically for the purpose of this mandate. Explain the use of each fixed asset. Leased fixed assets (with an option to purchase), are considered purchases. The cost of the fixed asset cannot be expensed for the year of purchase, unless permitted by the Commission on State Mandates. If a fixed asset is acquired for the subject state mandate, but is utilized in some way not directly related to the program, only the pro-rated portion of the asset which is used for purposes of the program is reimbursable.

Compensation for fixed asset costs are reimbursable utilizing the procedure provided in the Office and Management Circular A-87 (OMB A-87). Example: Compensation for the use of equipment. The claimant may be compensated for the equipment use through a use allowance or depreciation. A use allowance may be computed at an annual rate not to exceed 6 2/3% of acquisition cost. This is reported and claimed through the agency's service-wide cost allocation plan under the cost element "Use Allowance". Where a depreciation method is followed, adequate property records must be maintained and any generally accepted method of computing depreciation must be consistently applied for any specific class of assets for all affected programs.

Source documents may include, but are not limited to, invoices, receipts, purchase orders, and other documents evidencing the validity of the purchases.

(5) Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are reimbursable in accordance with the rules of the local jurisdiction. Give the name(s) of the traveler(s), purpose of travel, inclusive travel dates, destination points, and costs.

Source documents may include, but are not limited to, receipts, employee travel expense claims, and other documents evidencing the validity of the expenditures.

(6) Training

The cost of training specified in Section 6, Reimbursable Activities, is eligible for reimbursement. Give the class title, dates, location, and name(s) of the employee(s) attending training associated with the mandate. Reimbursable costs include salaries and benefits for time spent, the registration fee, transportation, lodging, and per diem.

Source documents may include, but are not limited to, receipts, employee time sheets, travel expense claim, and other documents evidencing the training expenses.

For audit purposes, all supporting documents must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. When no funds are appropriated for the initial claim at the time the claim was filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

**B. Form DAPS-1, Claim Summary**

This form is used to summarize direct costs by cost component and compute allowable indirect costs for the mandate. Claim statistics shall identify the amount of work performed

during the period for which costs are claimed. Direct costs summarized on this form are derived from form DAPS-2 and carried forward to form FAM-27.

**C. Form FAM-27, Claim for Payment**

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form DAPS-1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

**D. Cost Accounting Statistics**

The Commission on State Mandates requests that claimants send a copy of form DAPS-1 for the initial year's reimbursement claims by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, CA 95814, Facsimile: (916) 445-0278. Although providing this information is not a condition of payment, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate and recommend an appropriation to the Legislature.

**E. Direct Costs**

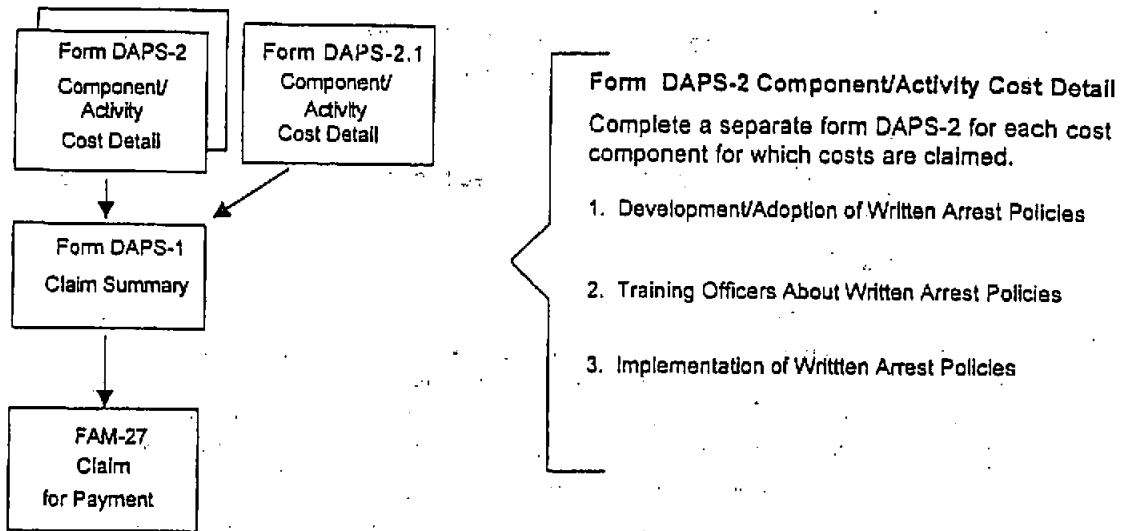
Direct costs are defined as costs that can be specifically traced to goods, services, units, programs, activities, or functions.

**F. Indirect Costs**

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

Compensation for indirect costs is reimbursable utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Proposal (ICRP) for the department if an indirect cost rate in excess of 10% is claimed. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate is in excess of 10%.

Illustration of Claim Forms



<p><b>CLAIM FOR PAYMENT</b> Pursuant to Government Code Section 17561 <b>DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS</b></p>	<p style="font-size: small;">For State Controller Use Only</p> <p>(19) Program Number 00167 (20) Date File _____/_____/_____ (21) LRS Input _____/_____/_____</p>
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<p>(01) Claimant Identification Number</p> <p>(02) Mailing Address</p> <p>Claimant Name</p> <p>County of Location</p> <p>Street Address or P. O. Box</p> <p>City                      State                      Zip Code</p>	<p>Reimbursement Claim Data</p> <p>(22) DAPS-1, (04)(1)(f)</p> <p>(23) DAPS-1,(04)(2)(f)</p> <p>(24) DAPS-1, (04)(3)(f)</p> <p>(25) DAPS-1, (06)</p> <p>(26)</p>
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<p>Type of Claim</p>	<p>Estimated Claim</p> <p>(03) Estimated <input type="checkbox"/></p> <p>(04) Combined <input type="checkbox"/></p> <p>(05) Amended <input type="checkbox"/></p>	<p>Reimbursement Claim</p> <p>(09) Reimbursement <input type="checkbox"/></p> <p>(10) Combined <input type="checkbox"/></p> <p>(11) Amended <input type="checkbox"/></p>	<p>(27)</p> <p>(28)</p> <p>(29)</p> <p>(30)</p>
<p>Fiscal Year of Cost</p>	<p>(06) 19__/19__</p>	<p>(12) 19__/19__</p>	<p>(31)</p>
<p>Total Claimed Amount</p>	<p>(07)</p>	<p>(13)</p>	<p>(32)</p>
<p>Less: 10% Late Penalty, not to exceed \$1,000</p>		<p>(14)</p>	<p>(33)</p>
<p>Less: Estimated Claim Payment Received</p>		<p>(15)</p>	<p>(34)</p>
<p>Net Claimed Amount</p>		<p>(16)</p>	<p>(35)</p>
<p>Due from State</p>	<p>(08)</p>	<p>(17)</p>	<p>(36)</p>
<p>Due to State</p>		<p>(18)</p>	<p>(37)</p>

**(38) CERTIFICATION OF CLAIM**

In accordance with the provisions of Government Code § 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 246, Statutes of 1995, and certify under penalty of perjury that I have not violated any of the provisions of Government Code sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 246, Statutes of 1995.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 246, Statutes of 1995, set forth on the attached statements.

Signature of Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_

Type or Print Name \_\_\_\_\_ Title \_\_\_\_\_

(39) Name of Contact Person for Claim \_\_\_\_\_ Telephone Number \_\_\_\_\_ Ext. \_\_\_\_\_

## DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS

## Certification Claim Form

## Instructions

FORM  
FAM-27

- (01) Leave blank.
- (02) A set of mailing labels with the claimant's I.D. number and address has been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label in the space shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.
- (03) If filing an original estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.
- (05) If filing an amended or combined claim, enter an "X" in the box on line (05) Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form DAPS-1 and enter the amount from line (11).
- (08) Enter the same amount as shown on line (07).
- (09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of reimbursement claim from form DAPS-1, line (11).
- (14) Filing Deadline. Initial Claims of Ch. 246/95. If the reimbursement claim for the period 1/1/96 to 6/30/96, 1996-97, or 1997-98 fiscal year is filed after February 24, 1999, the claim must be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- Filing Deadline. Annually Thereafter. If the reimbursement claim is filed after January 15 following the fiscal year in which costs were incurred, the claim must be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- (15) If filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16) Net Claimed Amount is positive, enter that amount on line (17) Due from State.
- (18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.
- (19) to (21) Leave blank.
- (22) to (37) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (25) for the reimbursement claim e.g. DAPS-1 (03), means the information is located on form DAPS-1, line (03). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). Completeness will expedite the payment process.
- (38) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.
- (39) Enter the name of the person and telephone number that this office should contact if additional information is required.
- SUBMIT A SIGNED ORIGINAL AND ONE COPY OF FORM FAM-27, AND ONE COPY OF ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:**

*Address, if delivered by U.S. Postal Service:*

OFFICE OF THE STATE CONTROLLER  
ATTN: Local Reimbursements Section  
Division of Accounting and Reporting  
P.O. Box 942850  
Sacramento, CA 94250

*Address, if delivered by other delivery service:*

OFFICE OF THE STATE CONTROLLER  
ATTN: Local Reimbursements Section  
Division of Accounting and Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

MANDATED COSTS DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS CLAIM SUMMARY						FORM DAPS-1
(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>				Fiscal Year 19__/19__	
(03)						
<b>Direct Costs</b>						
(04) Reimbursable Components	(a)	(b)	(c)	(d)	(e)	(f)
	Salaries	Benefits	Services and Supplies	Training and Travel	Fixed Assets	Total
1. Development/Adoption of Written Arrest Policies						
2. Training Officers About Written Arrest Policies						
3. Implementation of Written Arrest Policies						
(05) Total Direct Costs						
<b>Indirect Costs</b>						
(06) Indirect Cost Rate	[From ICRP]					%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [line (06) x (line (05)(a) + line (05)(b))]					
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]					
<b>Cost Reduction</b>						
(09) Less: Offsetting Savings, if applicable						
(10) Less: Other Reimbursements, if applicable						
(11) Total Claimed Amount	[Line (08) - (Line (09) + Line (10))]					

<b>DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS</b> <b>CLAIM SUMMARY</b> <b>Instructions</b>	<b>FORM</b> <b>DAPS-1</b>
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- (01) Enter the name of the claimant.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which costs were incurred or are to be incurred.
- Form DAPS-1 must be filed for a reimbursement claim. Do not complete form DAPS-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form DAPS-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Leave blank.
- (04) Reimbursable Components. For each reimbursable component, enter the totals from form DAPS-2, line (05), columns (d) through (h), and from form DAPS-2.1, line (04), to form DAPS-1, block (04) columns (a) through (e) in the appropriate row. Total the rows.
- (05) Total Direct Costs. Total columns (a) through (f).
- (06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have their own ICRP.
- (07) Total Indirect Costs. Multiply Total Salaries, line (05)(a) by the Indirect Cost Rate, line (06). If both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06).
- (08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(f) and Total Indirect Costs, line (07).
- (09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (10) Less: Other Reimbursements, if applicable. Enter the amount of other reimbursements received from any source, including but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10), from Total Direct and Indirect Costs, line (08). Enter the remainder on this line and carry the amount forward to form FAM-27, line (13) for the Reimbursement Claim.

<b>MANDATED COSTS</b> <b>DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS</b> <b>COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>DAPS-2</b>
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(01) Claimant	(02) Fiscal Year Costs Were Incurred
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(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

Development/Adoption of Written Arrest Policies

Training Officers About Written Arrest Policies

(04) Description of Expenses: Complete columns (a) through (g). Object Accounts

(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Travel and Training	(h) Fixed Assets

(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: _____ of _____							
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<b>DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS</b> <b>COMPONENT/ACTIVITY COST DETAIL</b> Instructions	<b>FORM</b> <b>DAPS-2</b>
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year in which costs were incurred.
- (03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form DAPS-2 shall be prepared for each component which applies.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in line (03), enter the employee's name, position title, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contracted services, etc.). The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed. If the descriptions are incomplete, the claim cannot be processed for payment. For audit purposes, all supporting documents must be retained by the claimant for a period of not less than two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. When no funds are appropriated for the initial claim at the time the claim was filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

Object/ Subobject Accounts	Columns								Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
Salaries	Employee Name	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours					
Benefits	Title	Benefit Rate			Benefits = Benefit Rate x Salaries				
Services and Supplies	Activities								
Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used			
Contracted Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost of Services Performed			Invoices
Travel and Training	Purpose of Trip	Per Diem Rate	Days Miles				Rate x Days or Miles Total Transportation Cost		
Travel	Name and Title	Mileage Rate	Transportation Mode						
Training	Employee Name & Title Name of Class		Dates Attended				Registration Fee		
Fixed Assets	Description of Equipment Purchased Equipment ID	Unit Cost	Quantity Used					Itemized Cost of Fixed Asset	Invoice

- (05) Total line (04), columns (d), (e), (f), (g), and (h) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the/activity number each. Enter totals from line (05), columns (d), (e), (f), (g), and (h) to form DAPS-1; block (04), columns (a), (b), (c), (d), and (e), in the appropriate row.

<b>MANDATED COSTS</b> <b>DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS</b> <b>COMPONENT/ACTIVITY COST DETAIL</b>	<b>FORM</b> <b>DAPS-2.1</b>
--------------------------------------------------------------------------------------------------------------------------	--------------------------------

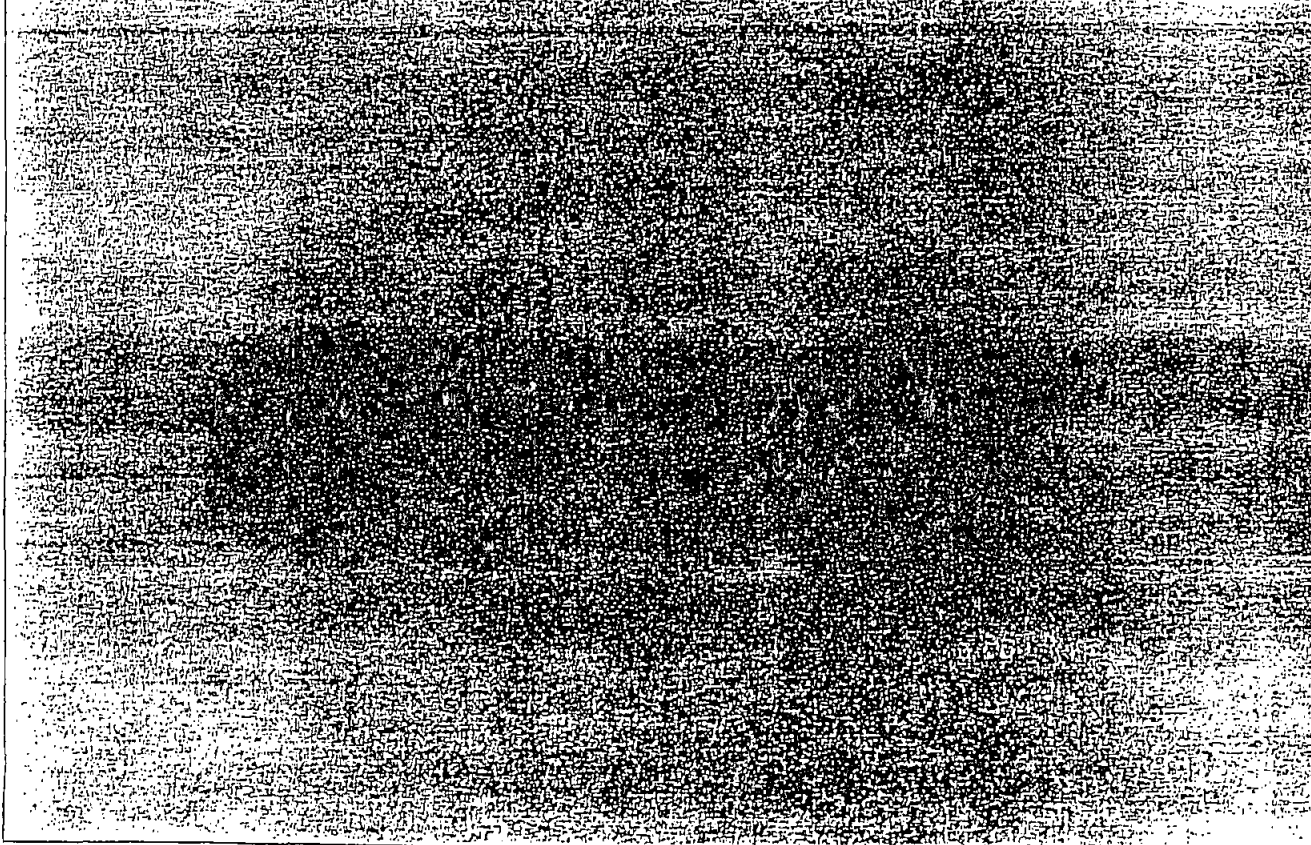
(01) Claimant	(02) Type of Claim	Fiscal Year
	Reimbursement <input type="checkbox"/>	
	Estimated <input type="checkbox"/>	19__/19__

**Claim Statistics**

<b>(03) Implementation of Written Arrest Policies</b>	
(a) Number of reported domestic violence incident responses in the fiscal year of claim	
(b) Average productive hourly rate	

**Unit Cost Method**

(04) Total Costs	{(Line (03)(a) x line (03)(b)) x 0.48 }
------------------	-----------------------------------------



<b>DOMESTIC VIOLENCE ARREST POLICIES AND STANDARDS</b> <b>COMPONENT/ACTIVITY COST DETAIL</b> <b>Instructions</b>	<b>FORM</b> <b>DAPS-2.1</b>
------------------------------------------------------------------------------------------------------------------------	--------------------------------

- (01) Enter the name of the claimant.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which costs were incurred or are to be incurred.
- Form DAPS-2.1 must be filed for a reimbursement claim. Do not complete form DAPS-2.1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form DAPS-2.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Implementation of Written Arrest Policies.
- (a) Enter the number of reported domestic violence incident responses in the fiscal year of claim.
- (b) Enter the average productive hourly rate of law enforcement officers.
- (04) Total Costs. Multiply line (03)(a) by line (03)(b) times 0.48 hour. Carry the amount forward to DAPS-1, line (04)(3)(a).

SENATE RULES COMMITTEEAB 1201

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614

Fax: (916) 327-4478

THIRD READINGBill No: AB 1201Author: Murray (D)Amended: 7/30/98 in SenateVote: 21

SENATE PUBLIC SAFETY COMMITTEE : 7-0, 5/12/98  
AYES: Vasconcellos, Rainey, Burton, Kopp, Polanco, Schiff,  
 Watson  
NOT VOTING: McPherson

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 73-4, 1/28/98 - See last page for vote

SUBJECT : Domestic violence: "Victims of Domestic  
 Violence" cards

SOURCE : Author

DIGEST : This bill would add specified domestic violence offenses to the existing "Victims of Domestic Violence" card provided to victims by local law enforcement. This bill also would require additional information concerning local domestic violence resources to be included on these cards, and would require local law enforcement to provide to victims, in writing, the telephone number for information about the California victims' compensation program.

Senate Floor Amendments of 7/30/98 add technical and double-joining language to avoid chaptering-out problems.

□

ANALYSIS : Current law requires that a "Victims of Domestic Violence" card containing specified information concerning rights and support services, must be handed out by law enforcement to victims of enumerated sex offenses.

This bill would expand this provision to include two domestic violence offenses (battery against a spouse, et al and felony domestic violence).

Under current law, the "Victims of Domestic Violence" card must contain the names and locations of rape victim counseling centers within the county, including specified centers, and their 24-hour counseling service telephone numbers.

This bill would revise this provision to also require the inclusion of "phone numbers of or local county hotlines for, or both the phone numbers of and local country hotlines for, local shelters for battered women . . . ."

Under current law, the cards must contain the following: "A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime."

This bill would require that the following also be included on the card: "A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime."

Current law generally requires local law enforcement to develop and implement written policies concerning domestic violence responses. These policies must include standards for written notice to victims at the scene of specified information.

This bill would add the following notice to this requirement: "For information about the California victims' compensation program, you may contact 1-800-777-9229."

This bill is double-joined with AB 2172 (Sweeney).

Prior Legislation

SB 835 (McCorquodale), Chapter 999 of 1991.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

□

SUPPORT : (Verified 7/30/98)

Los Angeles District Attorney's Office  
Attorney General's Office  
California Alliance Against Domestic Violence  
State Public Affairs Committee of the Junior League of California

ARGUMENTS IN SUPPORT : The author's office states, in part, "AB 1201 would provide victims of domestic violence vital information on available counseling and shelter services within their communities, as well as how to gain information about the California victims' compensation program."

"Under current statutes, law enforcement must refer victims of rape or sexual assault to appropriate rape crisis counseling centers and provide them with a "Domestic Violence Card" containing the names and phone numbers of community counseling services within the county. There is

no mandate that such information be provided to victims of domestic violence nor that they be informed of available compensation from the California victims' compensation program.

"It is imperative that we provide victims with resources and access to services to assist them in breaking out of the cycle of violence. . . . It makes common sense to provide victims access to counseling services before an abusive relationship leads to other violent crimes."

ASSEMBLY FLOOR :

AYES: Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Bordonaro, Bowen, Bowler, Brewer, Brown, Campbell, Cardenas, Cardoza, Cedillo, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Martinez, Mazzone, McClintock, Miller, Morrissey, Murray, Napolitano, Olberg, Ortiz, Pacheco, Papan, Perata, Poochigian, Prenter, Pringle, Richter, Runner, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thompson, Thomson, Torlakson, Villaraigosa, Vincent, Washington, Wayne, Wildman, Woods, Wright, Bustamante

□

NOES: Ackerman, Baugh, Kaloogian, Morrow  
 NOT VOTING: Margett, Migden, Oller

RJG:ctl 7/30/98 Senate Floor Analyses  
 SUPPORT/OPPOSITION: SEE ABOVE  
 \*\*\*\*\* END \*\*\*\*\*



## SENATE RULES COMMITTEE

AB 2172

Office of Senate Floor Analyses

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(916) 445-6614

Fax: (916) 327-4478

## THIRD READING

Bill No: AB 2172

Author: Sweeney (D), et al

Amended: 8/12/98 in Senate

Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 7-0, 6/16/98AYES: Vasconcellos, Rainey, Burton, Kopp, McPherson,  
Polanco, Schiff

NOT VOTING: Watson

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8ASSEMBLY FLOOR : 76-0, 5/13/98 - See last page for voteSUBJECT : Domestic violence: law enforcement training,  
responseSOURCE : Author

DIGEST : This bill would enhance law enforcement training with respect to signs of domestic violence, and to enhance law enforcement standards with respect to transporting victims to a hospital for treatment when necessary, and for assisting victims in safe passage out of their residences, as specified.

Senate Floor Amendments of August 12, 1998 add double joining language.

ANALYSIS : Existing law imposes the following requirements with respect to domestic violence training for law enforcement:

□

1. Requires POST to implement a training course for law enforcement officers in the handling of domestic violence complaints and to develop guidelines for officer response to domestic violence. The course must include instruction on specified procedures and techniques.

2. Requires every law enforcement agency in California to



develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls. The policies are required to include standards for specified responses, including emergency assistance to victims, such as medical care, transportation to a shelter and police standbys for removing personal property, and notice to victims of specified information.

This bill would require the law enforcement agency policies and standards for officer response to domestic violence calls to include children, transportation to a hospital for treatment when necessary, and assistance in safe passage out of a victim's residence.

The Department of Justice reports there were a total of 227,899 domestic violence-related calls for assistance in 1996.

This bill is double joined with AB 1201 (Murray) and AB 2177 (Kuehl).

#### Related Legislation

AB 1201 (Murray), which is on the Senate inactive file, would add specified domestic violence offenses to the existing "Victims of Domestic Violence" card provided to victims by local law enforcement. AB 1201 also would require additional information concerning local domestic violence resources be included on these cards.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

SUPPORT : (Verified 8/12/98)

California Child, Youth and Family Coalition  
Attorney General's Office  
Doris Tate Crime Victims Bureau  
Crime Victims United of California  
California Correctional Peace Officers Association  
California National Organization for Women  
California Psychiatric Association

□

Nicole Brown Simpson Charitable Foundation  
San Leandro Shelter for Women and Children  
National Organization for Victim Assistance

ARGUMENTS IN SUPPORT : The author states that there is not sufficient time given by law enforcement to "safe passage" of victims and children from an unsafe environment to a shelter, medical facility (if necessary) or other "safe" place.

#### ASSEMBLY FLOOR :

AYES: Ackerman, Aguiar, Alby, Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bordonaro, Bowen, Bowler, Brewer, Brown, Campbell, Cardenas, Cardoza, Cunneen, Davis, Ducheny, Escutia, Firestone, Floyd, Frusetta, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Leach, Lempert, Leonard, Machado, Margett, Martinez, Mazzone, McClintock, Migden, Miller, Morrissey, Morrow, Murray, Napolitano, Olberg, Oller, Ortiz, Pacheco, Papan, Perata,

Poochigian, Prenter, Richter, Runner, Scott, Shelley,  
Strom-Martin, Sweeney, Takasugi, Thompson, Thomson,  
Torlakson, Vincent, Washington, Wayne, Wildman, Woods,  
Wright, Villaraigosa

NOT VOTING: Bustamante, Cedillo, Figueroa, Pringle

RJG:sl 8/12/98 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

**State of California**

**TRIAL COURT FUNDING PROGRAM  
IMPLEMENTATION GUIDE**

**Provided by**

**GRAY DAVIS  
State Controller**

**Division of Local Government Fiscal Affairs**

**March 1989**

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## FOREWORD

This guide has been prepared under the direction of Gray Davis, State Controller, to assist counties in understanding the provisions of the Trial Court Funding Program authorized by the Brown-Presley Trial Court Funding Act (SB 612, Chapter 945, Statutes of 1988) and implemented by AB 1197, Chapter 944, Statutes of 1988. In using this guide, please bear in mind that this guide was prepared to familiarize counties with the preliminary requirements of the program and that detailed written procedures and regulations will be available in the near future.

**CHAPTER 1**

**INTRODUCTION**

**§1.01 LISTING OF KEY CONTACT PERSONNEL**

<i>NAME</i>	<i>FUNCTION</i>	<i>PHONE NUMBER</i>
Earl L. Lucas	Assistant Deputy State Controller	(916) 322-5615
Greg Brummels	Reporting and Auditing Requirements	(916) 322-8397
John Korsch	Implementation Guide Project Director	(916) 322-9896
Mike Hovey	Implementation Guide Project Manager	(916) 322-9891
Glenn Haas	Opting Resolutions	(916) 445-8757
Ginny Brummels	Mandated Cost and Grant Payments	(916) 324-0307
William Brennan	No and Low Property Tax Provisions	(916) 323-2356



## §1.02 SUMMARY OF TRIAL COURT FUNDING PROGRAM

The process of developing a Trial Court Funding Program to provide state funds to counties for support of the operation of trial courts began in 1985. Assembly Bill 19 (Chapter 1607 of the Statutes of 1985) originally added to law the Trial Court Funding Act of 1985. The Act was to become effective on January 1, 1986, but not operative until the effective date of statute appropriating funds for the purpose of the Act. Senate Bill 709 (Chapter 1211 of the Statutes of 1987) included appropriations to fund the Act and also amended AB 19 to provide that it become operative July 1, 1988. In addition, SB 709 amended other sections of existing law established by AB 19 affecting the Government Code, Penal Code, and Revenue and Taxation Codes. Subsequently, numerous bills were introduced to amend AB 19 and SB 709. Ultimately, Senate Bill 612 and Assembly Bill 1197 were signed into law.

Senate Bill 612 (Chapter 945 of the Statutes of 1988) repealed the Trial Court Funding Act of 1985 and enacted the Brown-Presley Trial Court Funding Act. SB 612 also amended sections of law including the Government Code, Health and Safety Code, and Penal Code, but the major change between the two acts is the elimination of state recapture of fees, fines and forfeitures.

Assembly Bill 1197 (Chapter 944 of the Statutes of 1988) included appropriations to fund the Act, making it operative January 1, 1989. AB 1197 also restructured the no- and low-property tax city provisions and amended other provisions relating to local financing.

The current Trial Court Funding Program provides "net" block grants to option counties based on the number of court judgeships, commissioners, and referees. An option county will be entitled to receive \$212,000 annually for each qualifying judicial position. Each option county will also receive a supplemental block grant for municipal and justice court judges' salaries. In addition, the program would add 98 new judicial positions to counties throughout the state. A Trial Court Improvement Fund is to be established to disburse \$20 million annually to counties for court construction and operating costs. The Program will also create an 8-member Task Force on Voir-Dire to compile a list of standardized questions for jury selection in a 3-year pilot project in Fresno and Santa Cruz counties.

County officials must consider all aspects of the Trial Court Funding Program when deciding whether to opt into the program. Some of the more important aspects are: potential property tax shifts from counties to no- and low-property tax cities; waiver of all claims for reimbursement for state-mandated local programs not previously approved and waiver of all court related mandates; Proposition 4 spending limitation transfers; spending of the block grant being limited to "court operations"; and additional reporting requirements to the state.

Counties must also adhere to the crucial dates of the program to avoid disruption to cash flow. Please refer to the next section for a summary of these key dates.

## §1.03 CALENDAR OF IMPORTANT DATES

### January 13, 1989

Counties with new judgeships in excess of 10, with respect to judgeships authorized by Chapter 1211 of the Statutes of 1987, must submit to the Controller a report of the 1987-88 fiscal year appropriations for court operations. (GC 77200).

### January 15, 1989

An option county must notify the State of its decision to opt into the program on or before this date to participate during the second half of the 1988-89 fiscal year. (GC 77300).

### February 15, 1989

The Controller shall transmit the first payment for the quarter beginning January 1, 1989 to each option county. (GC 77200).

### March 1, 1989

An option county must notify the State of its decision to opt into the program on or before this date to participate for the 1989-90 fiscal year. (GC 77300).

### March 31, 1989

Deadline for option counties to submit 1986-87 fiscal year report of amount of indirect services provided to trial courts and number of cases in regard to judicial arbitration, court mediation and conciliation services. (GC 77204)

### July 1, 1989

For each option county, this is the effective date that the state shall begin supplementing the block grant for a percentage of justice court judges' annual salaries (which shall be the same as municipal court judges). (GC 68202.5 and GC 68206).

### Annually

#### July 1

Block grants shall be adjusted by a percentage equal to the average percentage salary increase for the previous fiscal year for California state employees. (GC 77201).

#### June 1, September 1, December 1, March 1

Judicial Council shall certify to the Controller the salaries for justice court judges in option counties, and the number of reimbursable

positions in each county for purposes of calculating the block grant. (GC77205.5)

#### July 15, October 15, January 15, April 15

The Controller transmits quarterly block grant and supplemental grant payments to each option county. (GC 77200).

#### October 1

Deadline for option counties to submit annual reports to the Controller. (GC77205)

#### November 15

Notification deadline for counties to opt into the program for fiscal years following the 1989-90 fiscal year. (GC 77300).

#### June 30

Any unencumbered Trial Court Improvement Funds on this date shall revert to the Court Funding Account in the State General Fund. (GC 77207).

#### Varies

The Controller shall perform and publish annual financial and compliance audits of each option county's first full fiscal year of participation. (GC 77205).

The Controller shall annually compile and submit to the Legislature reports of the financial transactions of each option county relating to court operations. (GC77205).

The Controller shall disburse moneys in the Trial Court Improvement Fund to option counties pursuant to the Judicial Council's procedures beginning January 1, 1989. (GC77207).

Judicial Council will present an annual report to the Legislature on the use of the Trial Court Improvement Fund. (GC77207).

A county which has reached its constitutional spending limit pursuant to Article XIII B of the California Constitution may, after a successful override election, notify the state of its decision to opt into the system to be effective the quarter following notification. (GC77300).

## §1.04

## SENATE BILL 612 AND ASSEMBLY BILL 1197

This section contains excerpts from SB 612 and AB 1197 relating to the Trial Court Funding Program.

### CHAPTER 13 STATE FUNDING OF TRIAL COURTS

#### Article 1. General Provisions

77000. This chapter shall be known and may be cited as the Brown-Presley Trial Court Funding Act.

77001. As used in this chapter, "block grant" means the amount of state funds to be provided to a participating county for the support of the operation of the trial courts, as determined by the product of the rate of reimbursement under Section 77200 multiplied by the number of reimbursable positions.

77002. As used in this chapter "board" means the board of supervisors of a county.

77003. As used in this chapter, "court operations" means the county share of superior and municipal court judges' salaries, benefits, and public agency retirement contributions, and the salary, benefits, and public agency retirement contributions for justice court judges, subordinate judicial officers, other court staff including all municipal court staff positions specifically prescribed by statute, those deputy marshals, constables, and sheriffs as the court deems necessary for court operations, court-appointed counsel in juvenile court dependency proceedings, services and supplies relating to court operations, collective bargaining under the Meyers-Millas-Brown Act with respect to court employees specified in Section 3501.5, and actual indirect costs, not to exceed 18 percent of the block grant, for county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services. However, in a county with a population of 350,000 or less as determined by the Department of Finance, to the extent that the block grant for a given fiscal year

in that county, as adjusted by the current consumer price index, "court operations" includes probation services, indigent criminal defense, and pretrial release services.

77004. As used in this chapter, "option county" means a county which has adopted the provisions of this chapter for the current fiscal year.

77005. As used in this chapter, "state-mandated local program" means any and all reimbursements owed or owing by operation of either Section 6 of Article XIII B of the California Constitution or Section 17581 of the Government Code, or both.

77006. As used in this chapter, "subordinate judicial officer" means a court commissioner or referee authorized by statute.

77007. As used in this chapter, "trial court" means a superior court, municipal court, or justice court.

77008. As used in this chapter, "filing fees" means any and all fees and charges, liberally construed, collected or collectible for filing, processing, including service of process, copying, endorsing, or for any other service related to court operations as defined in Section 77003. However, with respect to a county with a population of 350,000 or less as determined by the Department of Finance, "filing fees" do not include any fees collected for probation services, indigent criminal defense, or pretrial release services.

77009. As used in this chapter, "fine" means any monetary penalty collected for a violation of law, to the extent it would otherwise accrue to the benefit of a county, including any penalty assessments or surcharges, whether collected by a court or agency of a county and regardless of the stage of the process after citation at which it is collected. Nothing in this section shall be construed to characterize civil penalties awarded or received in environmental, antitrust, or consumer protection actions brought by the people as a fine.

77010. As used in this chapter, "forfeiture" means all money forfeited by a person charged or cited for a violation of law, to the extent it would otherwise accrue to the benefit of a county, including bail, any penalty assessments or surcharges, whether

collected by a court or agency of a county and regardless of the stage of the process after citation at which it is collected.

77011. As used in this chapter, "penalty assessment" means any amount charged as a proportion of any fine or forfeiture and collected in addition thereto, to the extent it would otherwise accrue to the benefit of a county.

77012. As used in this chapter, "county" includes a city and county.

77013. As used in this chapter, "Controller" means the State Controller.

### Article 2. Legislative Findings

77100. The Legislature finds and declares that:

(a) The trial of civil and criminal actions is an integral and necessary function of the judicial branch of state government under Article VI of the California Constitution.

(b) All citizens of this state should enjoy equal and ready access to the trial courts.

(c) Local funding of trial courts may create disparities in the availability of the courts for the resolution of disputes and the dispensation of justice.

(d) The method of funding trial courts should not create financial barriers to the fair and proper resolution of civil and criminal actions.

(e) Many people defend their personal and property rights in the courts, and seek redress through the judicial system only when compelled by sheer necessity of circumstance.

(f) This chapter is enacted to promote the general welfare and to protect the public interest in a viable and accessible judicial system.

77101. The Legislature further finds and declares that the expenditure of the state funds under the provisions of this chapter is in the public interest and necessary to the accomplishment of the purposes set forth above.

### Article 3. State Finance Provisions

77200. (a) Except as provided in subdivisions (b) and (c) with respect to newly-created <sup>207</sup> judgeships, the Controller shall transmit to each

option county quarterly payments on the block grant owing to the county based upon the number of judges, court commissioners, and referees in the county, as determined pursuant to Section 77202, multiplied each quarter by the sum of fifty-three thousand dollars (\$53,000), as adjusted pursuant to Section 77201.

(b) With respect to judgeships authorized by Chapter 1211 of the Statutes of 1987, for any new judgeship in excess of 10 new judgeships for a particular option county, if the county's average quarterly appropriation for court operations for the 1987-88 fiscal year, as determined by the Controller, divided by the number of judges, referees, and court commissioners determined pursuant to Section 77202 for that year (the base year quarterly cost per judge), exceeds the applicable sum specified in subdivision (a) as adjusted pursuant to Section 77201 (the base year quarterly block grant), instead of the quarterly multiplier determined pursuant to subdivision (a), the quarterly multiplier for each such new judgeship shall be:

(1) For the first four quarters following the creation of that judgeship, the base year quarterly cost per judge.

(2) For the second four quarters thereafter, the applicable sum specified in subdivision (a) as adjusted pursuant to Section 77201 (the standard current quarterly block grant), plus 75 percent of the difference between the base year quarterly cost per judge and the base year quarterly block grant.

(3) For the third four quarters thereafter, the standard current quarterly block grant, plus 50 percent of the difference between the base year quarterly cost per judge and the base year quarterly block grant.

(4) For the fourth four quarters thereafter, the standard current quarterly block grant, plus 25 percent of the difference between the base year quarterly cost per judge and the base year quarterly block grant.

For purposes of this subdivision, a judgeship created upon the adoption of a resolution by the board of supervisors shall be deemed to be created in the quarter in which the resolution is adopted.

(c) With respect to judgeships authorized by statutes which take effect on or after January 1, 1990, if the county's average quarterly appropriation for court operations for the fiscal year preceding the effective date of that statute, as

determined by the Controller, reduced by the average quarterly amount of funds, if any, received during that fiscal year pursuant to Section 77207, divided by the number of judges, referees, and court commissioners determined pursuant to Section 77202, for that year (the base year quarterly cost per judge), exceeds the quarterly multiplier for the fiscal year in which the statute takes effect (the comparison year quarterly block grant), instead of the quarterly multiplier determined pursuant to subdivision (a), the quarterly multiplier for each such new judgeship shall be:

(1) For the first fiscal year following the effective date of the statute authorizing that judgeship, the base year quarterly cost per judge.

(2) For the second fiscal year thereafter, the applicable sum specified in subdivision (a) for each quarter of the current fiscal year as adjusted pursuant to Section 77201 (the standard current quarterly block grant), plus 75 percent of the difference between the base year quarterly cost per judge and the comparison year quarterly block grant.

(3) For the third fiscal year thereafter, the standard current quarterly block grant, plus 50 percent of the difference between the base year quarterly cost per judge and the comparison year quarterly block grant.

(4) For the fourth fiscal year thereafter, the standard current quarterly block grant, plus 25 percent of the difference between the base year quarterly cost per judge and the comparison year quarterly block grant.

(d) Quarterly payments shall be transmitted by the Controller on or before the 15th day of that quarter, except that payments for the quarter beginning January 1, 1989, shall be made no later than February 15, 1989.

77200.5 (a) Notwithstanding Section 77200, the Controller shall reduce the block grant owing to the County of Contra Costa in each fiscal year by the sum of fifty thousand dollars (\$50,000) and shall reduce the block grant owing to the County of Alameda in each fiscal year by the sum of fifty thousand dollars (\$50,000).

(b) The amount of the reduction made each fiscal year pursuant to subdivision (a), shall be allocated by the Controller to an eligible city as defined in Section 97.52 of the Revenue and Taxation Code.

77201. The sum set forth in subdivision (a) of Section 77200 shall be adjusted each fiscal year by a percentage equal to the average percentage salary increase for the previous fiscal year for California state employees, as determined pursuant to Section 68203, beginning with an adjustment for the 1989-90 fiscal year based on the 1988-89 state employees' average percentage salary increase.

77202. The number of judges, court commissioners, and referees for the purpose of calculating the block grant for a county shall be as follows:

(a) The number of superior and municipal court judges for purposes of calculating the block grant shall be those authorized by Section 4 of Article VI of the California Constitution and those authorized by statute. For purposes of this chapter, a judgeship created upon the adoption of a resolution by the board of supervisors shall be deemed to be "authorized by statute" beginning with the fiscal year next following the adoption of that resolution.

(b) The number of justice court judges for purposes of calculating the block grant shall be the number of positions in effect on January 1, 1988, as revised thereafter by statute. However, the block grant for a part-time justice court judgeship shall be prorated according to the percentage of a full-time work week, as determined pursuant to Section 68202.5.

(c) The number of subordinate judicial officers for purposes of calculating the block grant shall be the number of full-time equivalent court commissioners and referees authorized by statute, funded, filed, and reported to the Judicial Council on or before January 1, 1987, plus any such positions thereafter created on or before September 27, 1987, plus any such positions specifically authorized by statute enacted after January 1, 1988, funded, filed, and reported to the Judicial Council.

77202.5 (a) In any option year commencing with the 1989-90 fiscal year, in which the net county benefit for the County of Ventura is less than the sum of five million dollars (\$5,000,000) increased each fiscal year by the same percentage adjustment as is applied to the block grant pursuant to Section 77201, the Controller shall allocate to the county a special supplemental subvention of vehicle license fee revenues pursuant to Section 11005 of the Revenue and Taxation Code in an amount equal to the amount by which the net county benefit is less than five million dollars (\$5,000,000), as adjusted for the applicable fiscal year.

(b) For purposes of this section, the net county benefit for each fiscal year beginning in the 1989-90 fiscal year is the sum of the amount of the annual block grant to the county, as specified in Sections 77200 and 77201, and the supplemental block grant provided in subdivision (b) of 68206 for that fiscal year reduced by the amount subtracted from the county's proportionate share of property tax revenue pursuant to Section 97.38 of the Revenue and Taxation Code for that fiscal year.

77203. Reimbursement to an option county pursuant to this chapter shall be in lieu of any sixty thousand dollar (\$60,000) block amount traditionally provided by the Legislature for superior court judgeships established since January 1, 1973, for which such grants would otherwise be provided, payment for any prior or current program for which reimbursement of state-mandated local programs for the trial courts is claimed, and payment as provided in Section 77203.5. However, this section shall not apply to a proportional, thirty thousand dollar (\$30,000) block amount provided by the Legislature for the first half of the 1988-89 fiscal year.

77203.5 (a) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of all claims for reimbursement for state mandated local programs not theretofore approved by the State Board of Control, the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered, which is filed in acceptable form on or before the date the act which added this chapter is chaptered. A county may petition the Governor to exempt any such claim from this waiver requirement; and the Governor, in his discretion, may grant the exemption in whole or in part. The waiver shall not apply to or otherwise affect any claims accruing after initial notification. Renewal, renegotiation, or subsequent notification to continue in the program shall not constitute a waiver.

(b) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1987.

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77204. Beginning with the 1989-90 fiscal year, an option county shall:

(a) appropriate and authorize for expenditure each fiscal year for court operations an amount not less than the amount appropriated for court operations for the first full fiscal year in which the county is an option county, as adjusted each fiscal year by the percentage determined pursuant to Section 77201 for adjustment of the block grant; (b) provide the trial courts with at least the same proportionate level of indirect services as was provided in the 1986-87 fiscal year; (c) fulfill its shared financial and other obligations pursuant to Section 68073 of the Government Code; and (d) provide for judicial arbitration and court mediation and conciliation services at a level of service at least proportionate to the number of cases filed subject to such programs in the 1986-87 fiscal year.

77205. (a) An option county shall receive block grant disbursement from the state quarterly.

(b) The Controller shall adopt appropriate regulations for record keeping, accounting, and reporting by an option county in order to determine all county revenues, including filing fees, fines, and forfeitures, and all expenditures relating to court operations.

(c) The county shall submit to the Controller for each full fiscal year that the option county participates in the program, in the form and manner prescribed by the Controller, a report of all revenues, including filing fees, fines, and forfeitures, and all expenditures relating to court operations, for the prior 12-month period ending June 30. The report shall be submitted by each option county to the Controller on or before October 1 of the fiscal year following the reporting year.

The Controller shall compile and submit to the Legislature reports of the financial transactions of each option county relating to court operations.

Following the October 1 reporting deadline for an option county, the Controller shall not make any quarterly payment to that county until the report is submitted.

(d) Regulations, rules, and reporting requirements adopted pursuant to the provisions of this chapter shall be exempt from review and approval or other processing by the Office of Administrative Law as provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3.

(e) The Controller shall perform and publish financial and compliance audits of the reports submitted by option counties under this chapter for

the first full fiscal year for each county opting under this chapter. The Controller shall report the results of these audits to the Legislature.

77205.5. Except as to matters covered by Section 77205, the Judicial Council shall adopt pertinent rules to further the implementation of this chapter.

The Judicial Council shall certify to the Controller at least 30 days before the beginning of each quarter the salaries for justice court judges in option counties, and the number of reimbursable positions by category as provided in Section 77202 in each county for purposes of calculating the block grant as provided in Section 77200.

77206. A decision by an option county to opt into the system constitutes an agreement by the county that the appropriations limit of the state shall be increased and the appropriations limit of the county shall be decreased, by the amount specified below during the period of participation, to reflect the transfer to the state of financial responsibility for court services funded by the proceeds of taxes. The change in the appropriations limits shall be determined by the Department of Finance for the county's initial year of participation. The amount of the transfer shall be equal to the net amount of increased state funding, considering the increased funding for block grants and judges' salaries offset by reduced funding for trial court mandates and superior court sixty thousand dollar (\$60,000) block grants. For counties whose initial year of participation is the 1988-89 fiscal year, the Department of Finance shall determine the additional amount of appropriations limit to be transferred from the counties to the state in the 1989-90 fiscal year to reflect full-year program funding. If the option county ceases to participate, the appropriations limits of the county and state shall revert to the amounts that would have been applicable if no adjustment had been made under this section.

77207. (a) There is in the State Treasury the Trial Court Improvement Fund.

(b) The sum of twenty million dollars (\$20,000,000) shall be appropriated annually in the Budget Act to the Trial Court Improvement Fund for purposes of this section. Of that sum, any funds unencumbered at the end of that fiscal year shall revert to the Court Funding Account in the General Fund.

(c) Funds appropriated to the Trial Court Improvement Fund shall be disbursed to 210

counties through grants administered by the Judicial Council to improve court management and efficiency, case processing, and speedy trials as provided in subdivision (d).

(d) These funds shall be allocated or reallocated by order of the Judicial Council to trial courts for equipment, personnel, education, demonstration projects, research, programs, and facilities, to improve trial court operations. However, any allocation or reallocation by the Judicial Council shall be reported to the Director of Finance. Not more than 50 percent of the annual Trial Court Improvement Fund allocation may be used for court facilities construction.

Allocations for court facilities construction shall be based upon use of trial court improvement funds in an amount not to exceed 70 percent, and a local contribution not less than 30 percent, of the total cost of the project.

(e) Moneys in the Trial Court Improvement Fund shall be disbursed to option counties for allocation to trial courts beginning January 1, 1989, pursuant to procedures adopted by the Judicial Council.

(f) The Judicial Council shall present an annual report to the Legislature on the use of the Trial Court Improvement Fund. The report shall include appropriate recommendations.

77208. The board of supervisors of an option county may, at county cost, provide municipal court judges serving in any municipal court in the county on or after October 1, 1987, with retiree health benefits substantially equal to the retiree health benefits provided to superior court judges.

#### Article 4. County Option Procedure

77300. (a) An option county shall notify the state of its decision to opt into the system, as follows:

(1) For the second half of the 1988-89 fiscal year, on or before January 15, 1989.

(2) For the 1989-90 fiscal year, on or before March 1, 1989. (3) For any fiscal year thereafter, on or before November 15 of the preceding fiscal year.

(b) However, a county which has reached its constitutional spending limit pursuant to Article XIII B of the California Constitution may notify the state of its decision to opt into the system after a successful override election allowing the county to utilize state funding for local trial courts, to be

effective commencing with the next quarter following notification.

Nothing in this chapter shall be construed to prohibit the state and an option county, by mutual agreement between the Director of Finance and the parties signing the option resolution, from entering into a two-year option term.

By accepting state funding of trial courts, the county agrees to perform all duties and provide services required by this chapter and all other provisions of law.

77301. A county shall notify the state of its decision to opt into the system by transmitting to the Secretary of State and the Controller a resolution, agreeing without qualification or condition to be bound by the provisions of this chapter in consideration for state funding of trial courts in that county.

The resolution shall be signed by the chairperson of the board of supervisors, the presiding judge of the superior court, and the presiding judge of the municipal court district in which the county seat is located, if there is a municipal court, or if there is no such municipal court district, the judge of the justice court district in which the county seat is located, and shall certify that a majority of each of the board of supervisors, the judges of the superior court, and the judges of the municipal and justice courts in the county requests state funding. However, for fiscal year 1988-89, in a county having only one superior court judge, no municipal court judge, and only one justice court judge who serves less than half time, as determined by the Judicial Council, only the superior court judge may so sign and certify for the judges of the county.

The option notification for the second half of the 1988-89 fiscal year shall be deemed effective on January 1, 1989. In subsequent years, the option notification shall become effective for the full fiscal year on the July 1 following notification, provided that sufficient moneys have been appropriated in the Budget Act for that fiscal year to adequately fund the program.

#### Article 5. Nonseverability

77400. If any portion of this chapter is declared to be unconstitutional or void, the entire chapter shall become inoperative.

## GOVERNMENT CODE

Section 7.9a is added to the Government Code, to read:

7.9a. At the request of the Controller, two employees of that officer, in addition to those provided for in Section 7.9, shall be classified and compensated as career executives at category level IV or category level V.

Section 50 of Chapter 1211 of the Statutes of 1987 is amended to read:

Section 50. Sections 5 to 40, inclusive, of this act shall become individually operative only upon the notification to the state by the county affected by that particular section of its decision to opt into the system under the Brown-Preasley Trial Court Funding Act, as specified in Sections 77300 and 77301 of the Government Code.

Section 3501.5 is added to the Government Code, to read:

3501.5. As used in this chapter, "public employee" also means an employee of any superior court or an employee of any municipal court, except those employees whose job classification confers safety retirement status. These municipal and superior court employees shall be considered employees of the county for all matters within the scope of representation.

The county's established labor relations officer, shall represent the county in negotiations with any employee organization recognized to represent the municipal court or superior court employees.

Section 68202.5 is added to the Government Code, to read:

68202.5. (a) In an option county the judge of a full-time justice court shall receive the same salary as a judge of the municipal court. A judge of a part-time justice court in an option county shall receive a percentage of that amount which equals the proportion of a full-time work week required to serve the court to which the judge is appointed or elected, as determined by the Judicial Council and as provided for in the Budget Act.

(b) This section shall become operative July 1, 1989.



Section 68206 of the Government Code is amended to read:

68206. (a) Of the annual salary of each superior court judge the county for which he is elected or appointed shall pay the amount prescribed below and the remainder shall be paid by the state:

(1) Nine thousand five hundred dollars (\$9,500) for a county of 250,000 or more.

(2) Seven thousand five hundred dollars (\$7,500) for a county of more than 40,000 and less than 250,000.

(3) Five thousand five hundred dollars (\$5,500) for a county of 40,000 or less.

(b) For each option county under the Brown-Preasley Trial Court Funding Act, the state shall supplement the block grant for the second half of the 1988-89 fiscal year, as specified in Section 77200, by an amount equal to one-half of the annual salary of each municipal court judge in an option county, less the following amount per municipal court judge:

(1) Four thousand seven hundred fifty dollars (\$4,750) for a county of 250,000 or more.

(2) Three thousand seven hundred fifty dollars (\$3,750) for a county of more than 40,000 and less than 250,000.

(3) Two thousand seven hundred fifty dollars (\$2,750) for a county of 40,000 or less.

(c) This section shall be repealed on July 1, 1989.

Section 68206 is added to the Government Code, to read:

68206. (a) Of the annual salary of each superior court judge the county for which he is elected or appointed shall pay the amount prescribed below and the remainder shall be paid by the state:

(1) Nine thousand five hundred dollars (\$9,500) for a county of 250,000 or more.

(2) Seven thousand five hundred dollars (\$7,500) for a county of more than 40,000 and less than 250,000.

(3) Five thousand five hundred dollars (\$5,500) for a county of 40,000 or less.

(b) For each option county under the Brown-Preasley Trial Court Funding Act, the state shall supplement the block grant for the 1989-90 fiscal year, and for each option year thereafter, by an amount equal to the annual salaries of each municipal and justice court judge in an option county, less the following amount per judge:

(1) Nine thousand five hundred dollars (\$9,500) for a county of 250,000 or more.

(2) Seven thousand five hundred dollars (\$7,500) for a county of more than 40,000 and less than 250,000.

(3) Five thousand five hundred dollars (\$5,500) for a county of 40,000 or less.

(c) This section shall become operative July 1, 1989.

Section 69596 of the Government Code is amended to read:

69596. In the City and County of San Francisco there are 29 judges of the superior court, any one or more of whom may hold court.

Section 70047.5 of the Government Code is amended to read:

70047.5. (a) In Sonoma County, for the 1987-88 fiscal year each regular official reporter shall be paid an annual salary of thirty-seven thousand seven hundred forty dollars (\$37,740), which salary shall include payment for services in reporting all proceedings in the superior court, before the grand jury and the coroner. In order that the salary provided for in this section shall remain equitable and competitive, the salary provided for in this section shall be adjusted and increased by the same general across-the-board salary adjustment enacted by the county in the salary ordinance for other unrepresented employees.

(b) Reporters pro tempore serving in the superior and municipal courts shall receive a per diem equal to 90 percent of the gross hourly wage of a regular official superior court reporter, exclusive of benefits, for each full day, and one-half the per diem rate for each half day, when actually on duty under order of the court, and shall receive from the county their necessary traveling and other expenses when necessarily called from other counties.

(c) Regular official reporters shall be entitled to

vacation, sick leave and other benefits allowed to employees in the clerical nonsupervisory representation unit of the county.

(d) In Sonoma County the fee required by Section 70053 shall be twenty dollars (\$20).

(e) In addition to any fee otherwise required, in civil cases that last longer than one judicial day, a fee equal to one hundred ten dollars (\$110) shall be charged per day of service to the parties, on a pro rata basis, for the services of an official reporter for the second and each succeeding day a reporter is required. This fee shall be adjusted and increased by the same, general across-the-board salary adjustment enacted by the county in the salary ordinance for regular official court reporters.

(f) All parties shall deposit their pro rata share of such fees with the clerk at the beginning of the second and each succeeding day's court session.

(g) The fees shall be taxed as costs in favor of any party paying the same and to whom costs are awarded by the judgement of the court.

Section 76000 of the Government Code is amended to read:

76000. (a) In each county, provided that the board of supervisors has adopted a resolution stating that the provisions of this section and Section 76001, 76002, 76004, 76005, 76006, 76008, 76009 are necessary to the establishment of adequate facilities in the county, the following surcharges and assessments shall be collected, except that a resolution adopted pursuant to Section 76004 may limit the collection to the assessments specified in paragraph (2) or (3), as applicable, a resolution adopted pursuant to Section 76005 or 76008 shall limit the collection to the assessments specified in paragraph (2), and a resolution adopted pursuant to Section 76009 shall limit the collection to the assessments specified in paragraph (4):

(1) Except as limited by resolution pursuant to this subdivision, with respect to each fund established pursuant to Section 76001, 76002, 76004, or 76006, for each parking offense where a fine or forfeiture is imposed, a surcharge of one dollar and fifty cents (\$1.50) shall be included in the fine or forfeiture.

The judges of the county shall increase the bail schedule amounts as appropriate to reflect the surcharge provided for by this subdivision.

In those cities, districts, or other issuing agencies which elect to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the surcharge provided for by this paragraph.

(2) With respect to each fund established pursuant to Section 76001, 76002, 76004, 76005, or 76008, except in the counties listed in paragraph (3), there shall be levied an additional amount of one dollar (\$1) for every ten dollars (\$10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to clause (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and placed in the fund established pursuant to Sections 76001, 76002, 76004, 76005, or 76008.

(3) Except as provided in subdivision (h) of Section 76006, but notwithstanding any other provision of law, in Alameda, Contra Costa, Fresno, Kern, Los Angeles, Marin, Monterey, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Ventura, and Yolo Counties, with respect to each fund established pursuant to Section 76004 or 76006, there shall be levied an additional amount of two dollars (\$2) for every ten dollars (\$10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to clause (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. These amounts shall be deposited with the county treasurer and placed in the funds established pursuant to Sections 76004 and 76006.

(4) With respect to each fund established pursuant to Section 76009, there shall be levied an additional amount of fifty cents (\$.50) for every ten dollars (\$10) or fraction thereof which shall be collected together with and in the same manner as the assessment established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to clause (iii) paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code. This amount shall be deposited with the county treasurer and placed in the fund established pursuant to Section 76009.

(b) The surcharge and assessment increase imposed pursuant to this section shall continue so long as deposits to the funds are required pursuant to Section 76001, 76002, 76004, 76005, 76006, 76008, or 76009.

(c) No county, city and county, city, district or other issuing agency shall be required to contribute revenues to any fund in excess of those revenues generated from the surcharges and assessments established in the resolution adopted pursuant to this section, except as otherwise agreed upon by the local governmental entities involved.

Section 76006 of the Government Code is amended to read:

76006. (a) Except as provided in subdivision (h), but notwithstanding any other provision of law, for the purpose of assisting the Alameda, Contra Costa, Fresno, Kern, Marin, Monterey, Orange, Placer, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Ventura, or Yolo County in the acquisition, rehabilitation, construction, and financing of courtrooms or of a courtroom building or buildings containing facilities necessary or incidental to the operation of the justice system, the board of supervisors shall establish in the county treasury a Courthouse Temporary Construction Fund into which shall be deposited the amounts collected pursuant to subdivisions (d), (e), and (f). The moneys of the Courthouse Temporary Construction Fund shall be payable only for the purposes set forth in subdivision (b) and at the time necessary therefor:

(b) In conjunction with the acquisition, rehabilitation, construction, or financing of courtrooms or of a courtroom building or buildings referred to in subdivision (a), the county may use the moneys of the Courthouse Temporary Construction Fund (1) to rehabilitate existing courtrooms or an existing courtroom building or buildings for other uses if a new courtroom or a courtroom building or buildings are acquired, constructed, or financed or (2) to acquire, rehabilitate, construct, or finance excess courtrooms or an excess courtroom building or buildings if such excess is anticipated to be needed at a later time.

(c) Any excess courtroom or excess courtroom building or buildings that are acquired, rehabilitated, constructed, or financed pursuant to subdivision (b) may be leased or rented for uses other than the operation of the justice system until such time as such excess courtrooms or excess courtroom building or buildings are needed for the operation of the justice system. Any amount received as lease or rental payments pursuant to this subdivision shall be deposited in the Courthouse Temporary Construction Fund.

(d) Except in Marin, Monterey, Riverside, San Luis Obispo, Solano, Sonoma, Stanislaus, Ventura, and Yolo Counties, the county treasurer shall place in the fund one dollar and fifty cents (\$1.50) for each parking case presented to or filed in the courts of the county. Such moneys shall be taken from fines and forfeitures deposited with the treasurer prior to any division pursuant to Section 1463 of the Penal Code.

(e) Except in Marin, Monterey, Riverside, San Luis Obispo, Solano, Sonoma, Stanislaus, Ventura, and Yolo Counties, each city, district, or other issuing agency which elects to receive, deposit, accept forfeitures, and otherwise process the posting of bail for parking violations pursuant to subdivision (3) of Section 1463 of the Penal Code, shall pay one dollar and fifty cents (\$1.50) for each bail deposit collected on each violation which is not filed in court to the county treasurer. Such payments to the county treasurer shall be made monthly, and the treasurer shall deposit all such sums in the fund.

(f) The county treasurer shall place all additional assessment amounts collected on nonparking offenses pursuant to paragraph (3) of subdivision (a) of Section 76000 in the fund.

The fund moneys shall be held by the treasurer separate from any funds subject to transfer or

division pursuant to Section 1463 of the Penal Code.

Deposits to the fund in accordance with subdivisions (d), (e), and this subdivision shall continue through and including the 20th year after the initial calendar year in which the surcharge is collected.

(g) Subdivisions (a) to (f), inclusive, of this section shall become operative upon the adoption of a resolution by the board of supervisors stating that the provisions of this section are necessary to the establishment of adequate courtroom facilities in the county setting forth the surcharge or surcharges, and the manner in which such surcharge or surcharges shall be collected, and instructing the county clerk to transmit, on the next business day following the adoption of the resolution, a copy of the resolution to the clerk of the municipal court.

(h) Alameda County may collect those funds only so long as the county maintains the Berkeley-Albany Municipal Court. In the event that the Berkeley-Albany Municipal Court is closed, Alameda County may not collect funds pursuant to this section.

#### HEALTH AND SAFETY CODE

Section 1797.98a of the Health and Safety Code is amended to read:

1797.98a. Each county may establish an Emergency Medical Services Fund, upon adoption of a resolution by the board of supervisors. The money in the fund shall be available for the reimbursements required by this chapter. The fund shall be administered by each county, except that a county electing to have the state administer its medically indigent services program may also elect to have its Emergency Medical Services Fund administered by the state. Costs of administering the fund shall be reimbursed by the fund, up to 10 percent of the amount of the fund. The fund shall be utilized to reimburse physicians and hospitals for patients who do not make payment for emergency medical services and for other emergency medical services purposes as determined by each county. Fifty-eight percent of the money in the fund shall be distributed to physicians for emergency services provided by all physicians, except those physicians employed by county hospitals or district hospitals, in general acute care hospitals that provide basic or comprehensive emergency services up to the time the patient is stabilized; 25 percent of the fund shall be distributed only to hospitals providing

disproportionate trauma and emergency medical care services, and 17 percent of the fund shall be distributed for other emergency medical services purposes as determined by each county. The source of the money in the fund shall be the penalty assessment made for this purpose, as provided in Section 1465 of the Penal Code.

#### PENAL CODE

Section 1463 of the Penal Code is amended to read:

1463. Except as otherwise specifically provided by law:

(a) All fines and forfeitures including Vehicle Code fines and forfeitures collected upon conviction or upon the forfeiture of bail, together with moneys deposited as bail, in any municipal court or justice court, shall, as soon as practicable after the receipt thereof, be deposited with the county treasurer of the county in which the court is situated. The moneys so deposited shall be distributed as follows:

(1) Once a month there shall be transferred into the proper funds of the county an amount equal to the fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail following arrests made by officers or other persons employed by the state or by the county in which the court is situated, exclusive of fines or forfeitures or forfeitures of bail collected from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code within the limits of a city within the county.

(2) Except as otherwise provided in this subdivision, once a month there shall be transferred into the traffic safety fund of each city in the county an amount equal to 50 percent of all fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code within that city, and an amount equal to the remaining 50 percent shall be transferred to the special road fund of the county. However, the board of supervisors of the county may, by resolution, provide that not more than 50 percent of the amount otherwise to be transferred to the special road fund of the county, be transferred into the general fund of the county; and the Board of Supervisors of Merced or Yolo County may provide, by resolution, that until July 1, 1994, up to 100 percent of the amount otherwise to be

transferred to the special road fund of the county shall be transferred into the general fund of the county for the purpose of funding court operations.

Once a month there shall be transferred into the general fund of the county an amount equal to that percentage of the fines and forfeitures collected during the preceding month upon the conviction or upon the forfeiture of bail from any person arrested by a state officer and charged with the commission of a misdemeanor under the Vehicle Code on state highways constructed as freeways whereon city police officers enforced the provisions of the Vehicle Code on April 1, 1965, within the limits of a city within the county which is set forth in the schedule appearing in paragraph (3). If this paragraph is applicable within a city, it shall apply uniformly throughout the city to all freeways regardless of the date of freeway construction or completion.

(3) Once a month there shall be transferred into the general fund of the county an amount equal to that percentage of the fines and forfeitures collected during the preceding month upon conviction or upon the forfeiture of bail following arrests made by officers or other persons employed by each city in the county which is set forth in the following schedule:

<u>County and city</u>	<u>Percentage</u>
<b>Alameda</b>	
Alameda	18
Albany	29
Berkeley	19
Emeryville	13
Hayward	10
Livermore	7
Oakland	22
Piedmont	44
Pleasanton	17
San Leandro	9
County percentage	21
<b>Amador</b>	
Amador	25
Jones	25
Jackson	25
Plymouth	25
Sutter Creek	25
County percentage	29
<b>Butte</b>	
Biggs	75
Chico	22
Gridley	216

Oroville	9
County percentage	20
<b>Calaveras</b>	
Angels	62
County percentage	62
<b>Colusa</b>	
Colusa	13
Williams	17
County percentage	16
<b>Contra Costa</b>	
Antioch	11
Brentwood	24
Concord	18
El Cerrito	19
Hercules	14
Martinez	22
Pindole	22
Pittsburg	5
Richmond	14
San Pablo	12
Walnut Creek	24
County percentage	14
<b>Del Norte</b>	
Crescent City	19
County percentage	19
<b>El Dorado</b>	
Placerville	14
County percentage	14
<b>Fresno</b>	
Clovis	23
Coalinga	21
Firebaugh	16
Fowler	34
Fresno	26
Huron	24
Kerman	14
Kingsburg	34
Mendota	11
Orange Cove	24
Parlier	21
Reedley	30
Sanger	29
San Joaquin	15
Selma	14
County percentage	24
<b>Glerin</b>	
Orland	27
Willows	36
County percentage	32
<b>Humboldt</b>	
Arcata	9
Blue Lake	26

Eureka	11	Glendale	16
Ferndale	30	Glendora	12
Fortuna	17	Hawthorne	7
Trinidad	11	Hermosa Beach	14
County percentage	11	Huntington Park	12
<b>Imperial</b>		Inglewood	16
Brawley	8	La Verne	14
Calexico	10	Long Beach	14
Callipatria	30	Los Angeles	8
El Centro	5	Lynwood	9
Holtville	18	Manhattan Beach	13
Imperial	8	Maywood	15
Westmorland	12	Monrovia	11
County percentage	8	Montebello	11
<b>Inyo</b>		Monterey Park	11
Bishop	25	Palms Verdes Estates	10
County percentage	25	Pasadena	9
<b>Kern</b>		Pomona	12
Bakersfield	10	Redondo Beach	15
Delano	13	San Fernando	17
Maricopa	36	San Gabriel	18
Shafter	15	San Marino	5
Taft	19	Santa Monica	11
Tehachapi	12	Sierra Madre	11
Wasco	28	Signal Hill	24
County percentage	12	South Gate	13
<b>Kings</b>		South Pasadena	9
Corcoran	31	Torrance	16
Hanford	21	Vernon	25
Lemoore	25	West Covina	11
County percentage	25	Whittier	11
<b>Lake</b>		County percentage	11
Lakeport	33	<b>Madera</b>	
County percentage	33	Chowchilla	17
<b>Lassen</b>		Madera	16
Susanville	21	County percentage	17
County percentage	21	<b>Marin</b>	
<b>Los Angeles</b>		Belvedere	16
Alhambra	13	Corte Madera	12
Arcadia	11	Fairfax	30
Avalon	54	Larkspur	30
Azusa	11	Mill Valley	13
Bell	11	Ross	18
Beverly Hills	14	San Anselmo	11
Burbank	14	San Rafael	13
Claremont	5	Sausalito	21
Compton	16	County percentage	16
Covina	11	<b>Mendocino</b>	
Culver City	10	Fort Bragg	19
El Monte	11	Point Arena	40
El Segundo	11	Ukiah	10
Gardena	2217	Willits	24
		County percentage	17

<b>Merced</b>	
Atwater	23
Dos Palos	21
Gustine	23
Livingston	14
Los Banos	13
Merced	18
County percentage	18
<b>Modoc</b>	
Aituras	42
County percentage	42
<b>Monterey</b>	
Carmel	17
Gonzales	10
Greenfield	13
King City	36
Monterey	13
Pacific Grove	22
Salinas	36
Soledad	16
County percentage	23
<b>Napa</b>	
Calistoga	37
Napa	11
St. Helena	12
County percentage	14
<b>Nevada</b>	
Grass Valley	7
Nevada City	17
County percentage	9
<b>Orange</b>	
County percentage	15
<b>Placer</b>	
Auburn	18
Colfax	8
Lincoln	26
Rocklin	16
Roseville	10
County percentage	14
<b>Plumas</b>	
Portola	19
County percentage	19
<b>Riverside</b>	
Banning	35
Beaumont	15
Blythe	9
Coachella	12
Corona	12
Elsinore	10
Hemet	35

Indio	16
Palm Springs	35
Perris	14
Riverside	16
San Jacinto	41
County percentage	35
<b>Sacramento</b>	
Folsom	31
Galt	25
Isleton	13
North Sacramento	10
Sacramento	21
County percentage	26
<b>San Benito</b>	
Hollister	9
San Juan Bautista	28
County percentage	11
<b>San Bernardino</b>	
Banow	23
Chino	14
Cotton	21
Fontana	15
Needles	33
Ontario	20
Redlands	28
Rialto	15
San Bernardino	20
Upland	14
County percentage	20
<b>San Diego</b>	
Carlsbad	8
Chula Vista	23
Coronado	25
Del Mar	8
El Cajon	17
Escondido	16
Imperial Beach	8
La Mesa	23
Lemon Grove	8
National City	14
Oceanside	15
San Marcos	8
Vista	8
San Diego	6
County percentage	25
<b>San Joaquin</b>	
Lodi	18
Maricopa	8
Ripon	11
Stockton	14
Tracy	15
County percentage	14

<b>San Luis Obispo</b>	
Arroyo Grande	9
Paso Robles	26
Pismo Beach	8
San Luis Obispo	21
County percentage	18

<b>San Mateo</b>	
Atherton	27
Belmont	7
Burlingame	38
Colma	40
Daly City	24
Hillsborough	75
Menlo Park	12
Millbrae	18
Redwood City	27
San Bruno	13
San Carlos	8
San Mateo	42
South San Francisco	12
County percentage	21

<b>Santa Barbara</b>	
Guadalupe	28
Lompoc	16
Santa Barbara	11
Santa Maria	12
County percentage	13

<b>Santa Clara</b>	
Alviso	75
Campbell	16
Gilroy	28
Los Altos	16
Los Gatos	30
Morgan Hill	11
Mountain View	13
Palo Alto	21
San Jose	13
Santa Clara	16
Sunnyvale	26
County percentage	16

<b>Santa Cruz</b>	
Capitola	21
Santa Cruz	23
Watsonville	21
County percentage	22

<b>Shasta</b>	
Redding	22
County percentage	22

<b>Sierra</b>	
Loyalton	75
County percentage	75

<b>Slackyou</b>	
Corris	18
Dunsmuir	29
Etna	18
Fort Jones	46
Montague	75
Mount Shasta	37
Tulelake	33
Yreka	30
County percentage	29

<b>Solano</b>	
Benicia	17
Dixon	18
Fairfield	18
Rio Vista	19
Suisun	7
Vacaville	15
Vallejo	18
County percentage	19

<b>Sonoma</b>	
Cloverdale	40
Cotati	40
Healdsburg	40
Petaluma	24
Rohnert Park	40
Santa Rosa	40
Sebastopol	40
Sonoma	40
County percentage	40

<b>Stanislaus</b>	
Ceres	14
Modesto	15
Newman	10
Oakdale	15
Patterson	20
Riverbank	18
Turlock	19
County percentage	15

<b>Sutter</b>	
Live Oak	17
Yuba City	17
County percentage	17

<b>Tehama</b>	
Coming	26
Red Bluff	39
Tehama	10
County percentage	31

<b>Tulare</b>	
Oruba	21
Exeter	23
Lindsay	24
Porterville	26



Tulare . . . . .	20
Visalia . . . . .	17
Woodlake . . . . .	15
County percentage . . . . .	21
<b>Tuolumne</b>	
Sonora . . . . .	23
County percentage . . . . .	23
<b>Ventura</b>	
Fillmore . . . . .	16
Ojai . . . . .	16
Oxnard . . . . .	16
Port Hueneme . . . . .	16
Santa Paula . . . . .	16
Ventura . . . . .	16
County percentage . . . . .	16
<b>Yolo</b>	
Davis . . . . .	22
Winters . . . . .	19
Woodland . . . . .	20
County percentage . . . . .	20
<b>Yuba</b>	
Marysville . . . . .	15
Wheatland . . . . .	38
County percentage . . . . .	15

In any county for which a county percentage is set forth in the above schedule and which contains a city which is not listed or which is hereafter created, there shall be transferred to the county general fund the county percentage. In any county for which no county percentage is set forth, and in which a city is hereafter created, there shall be transferred to the county general fund 15 percent.

A county and city therein may, by mutual agreement, adjust the percentages herein.

(4) Once a month there shall be transferred to each city in the county an amount equal to the total sum remaining after the transfers provided for in paragraphs (2) and (3) have been made of the fines and forfeitures collected during the preceding month upon conviction or upon the forfeiture of bail following arrests made by officers or other persons employed by that city or arrests made by state officers for misdemeanor violations of the Vehicle Code.

(b) Any money deposited with the court or with the clerk thereof which, by order of the court or for any other reason, should be returned, in whole or in part, to any person, or which is by law payable to the state or to any other public agency, shall be paid to that person or to the state or to the other public agency by warrant of the county auditor, which shall

be drawn upon the requisition of the clerk of such court.

All money deposited as bail which has not been claimed within one year after the final disposition of the case in which the money was deposited, or within one year after an order made by the court for the return or delivery of the money to any person, shall be apportioned between the city and the county and paid or transferred in the manner provided above for the apportionment and payment of fines and forfeitures. This paragraph controls over any conflicting provisions of law.

(c) This section does not require any county or municipal or justice court to process a parking penalty under Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code for a city, district, or any other issuing agency prior to the filing of a complaint.

Section 1463.28 is added to the Penal Code, to read:

1463.28. (a) Notwithstanding any other provision of law, for each option county, as defined by Section 77004 of the Government Code, which has adopted the resolution specified in subdivision (b), that portion of fines and forfeitures, whether collected by the courts or by other processing agencies, which are attributable to an increase in the bail amounts adopted subsequent to the resolution pursuant to subdivision (c) or (d) of Section 1269b which would otherwise be divided between the county and cities within the county shall be deposited into the county general fund up to the annual limit listed in subdivision (b) for that county. Fine and forfeiture increments which exceed the specified annual limit shall be divided between the county and the cities within the county as otherwise provided by law. Until December 31, 1992, the scheduled bail amounts in such a county may exceed any limit established pursuant to subdivision (d) of Section 1269b.

(b) The counties which may adopt a resolution directing that future increments in fines and forfeitures as specified in subdivision (a) be deposited in the county general fund and the annual limit applicable to those counties is as follows

County	Annual Limit
Alpine . . . . .	\$ 300,000
Amador . . . . .	200,000
Butte . . . . .	900,000
Calaveras . . . . .	300,000
Contra Costa . . . . .	100,000

Del Norte	200,000
Fresno	700,000
Humboldt	200,000
Kings	300,000
Lake	400,000
Lassen	200,000
Los Angeles	19,000,000
Madera	600,000
Mariposa	200,000
Mendocino	600,000
Modoc	200,000
Mono	200,000
Plumas	200,000
San Benito	300,000
San Diego	5,200,000
San Joaquin	1,000,000
Santa Clara	3,200,000
Sierra	300,000
Stanislaus	1,900,000
Sutter	800,000
Trinity	200,000
Tulare	2,000,000
Tuolumne	400,000
Yolo	700,000
Yuba	900,000

REVENUE AND TAXATION CODE

Section 97 of the Revenue and Taxation Code is amended to read:

97. Except as otherwise provided in Sections 97.3, 97.32, 97.35, 97.37, and 97.38, for the 1980-81 fiscal year and each fiscal year thereafter, property tax revenues shall be apportioned to each jurisdiction pursuant to this section and Section 97.5 by the county auditor, subject to allocation and payment of funds as provided for in subdivision (b) of Section 33670 of the Health and Safety Code, to each jurisdiction in the following manner:

(a) Except as provided in subdivision (b), for each tax rate area, each jurisdiction shall be allocated an amount of property tax revenue equal to the amount of property tax revenue allocated pursuant to this chapter to each jurisdiction in the prior fiscal year, modified by any adjustments required by Section 99 or 99.4.

(b) For each tax rate area, each special district shall be allocated an amount of property tax revenue equal to the amount of property tax revenue which would have been allocated pursuant to this chapter to such district in the prior fiscal year if no adjustment had been made pursuant to Section 98.5. This amount shall then be adjusted for the current year pursuant to Section 98.6.

(c) The difference between the total amount of property tax revenue and the amounts allocated pursuant to subdivision (a) shall be allocated pursuant to Section 98, and shall be known as the "annual tax increment."

(d) For purposes of this section, the amount of property tax revenue referred to in subdivision (a) shall not include amounts generated by the increased assessments under Chapter 3.5 (commencing with Section 75).

Section 97.35 of the Revenue and Taxation Code is repealed.

Section 97.35 is added to the Revenue and Taxation Code, to read:

97.35 (a) In each county, other than the County of Mono and the County of Ventura, having within its boundaries a qualifying city, the computations made pursuant to Section 97, for the 1989-90 fiscal year and each fiscal year thereafter, shall be modified as follows:

(c) This section shall remain in effect only until December 31, 1992, and on that date is repealed. After that date fines and forfeitures shall be distributed as otherwise provided by law.

Section 1465 of the Penal Code is amended to read:

1465. In addition to the assessments levied by Section 1464, an additional assessment of two dollars (\$2) for every ten dollars (\$10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except offenses relating to parking or registration, or offenses by pedestrians or bicyclists, or where an order is made to pay a sum to the general fund of the county pursuant to clause (iii) of paragraph (3) of subdivision (a) of Section 258 of the Welfare and Institutions Code, may be imposed by each county upon the adoption of a resolution by the board of supervisors. An assessment imposed by this section shall be collected and disbursed as provided in Chapter 2.5 (commencing with Section 1797.98a) of Division 2.5 of the Health and Safety Code.

With respect to tax rate areas within the boundaries of a qualifying city, there shall be excluded from the aggregate amount of "property tax revenue allocated pursuant to this chapter to local agencies, other than for a qualifying city, in the prior fiscal year," an amount equal to the sum of the amounts calculated pursuant to the TEA formula.

(b) (1) Except as otherwise provided in this section, each qualifying city shall, for the 1989-90 fiscal year and each year thereafter, be allocated by the auditor an amount determined pursuant to the TEA formula.

(2) For each qualifying city, the auditor shall, for the 1989-90 fiscal year and each year thereafter, allocate the amount determined pursuant to the TEA formula to all tax rate areas within that city in proportion to each tax rate area's share of the total assessed value in the city for the applicable fiscal year, and the amount so determined shall be subtracted from the county's proportionate share of property tax revenue for that fiscal year within those tax rate areas.

(3) After making the allocations pursuant to paragraphs (1) and (2), but before making the calculations pursuant to Section 98, the auditor shall, for all tax rate areas in the qualifying city, calculate the proportionate share of property tax revenue allocated pursuant to this section and Section 97 in the 1989-90 fiscal year and each fiscal year thereafter to each jurisdiction in the tax rate area.

(4) In lieu of making the allocations of annual tax increment pursuant to subdivision (e) of Section 98, the auditor shall, for the 1989-90 fiscal year and each year thereafter, allocate the amount of property tax revenue determined pursuant to subdivision (d) of Section 98 to jurisdictions in the tax rate area using the proportionate shares derived pursuant to paragraph (3).

(5) For purposes of the calculations made pursuant to Section 97, in the 1990-91 fiscal year and each fiscal year thereafter, the amounts that would have been allocated to qualifying cities pursuant to this subdivision shall be deemed to be the "amount of property tax revenue allocated in the prior fiscal year."

(c) "TEA formula" means Tax Equity Allocation formula, and shall be calculated by the auditor for each qualifying city as follows:

(1) For the 1988-89 fiscal year and each fiscal

amount of property tax revenue to be allocated to all jurisdictions in all tax rate areas within the qualifying city, before the allocation and payment of funds in that fiscal year to a community redevelopment agency within the qualifying city, as provided in subdivision (b) of Section 33670 of the Health and Safety Code.

(2) The auditor shall determine the total amount of funds allocated in each fiscal year to a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

(3) The auditor shall determine the total amount of funds paid in each fiscal year by a community redevelopment agency within the city to jurisdictions other than the city pursuant to subdivision (b) of Section 33401 and Section 33676 of the Health and Safety Code, and the cost to the redevelopment agency of any land or facilities transferred and any amounts paid to jurisdictions other than the city to assist in the construction or reconstruction of facilities pursuant to an agreement entered into under Section 33401 or 33445.5 of the Health and Safety Code.

(4) The auditor shall subtract the amount determined in paragraph (3) from the amount determined in paragraph (2).

(5) The auditor shall subtract the amount determined in paragraph (4) from the amount determined in paragraph (1).

(6) The amount computed in paragraph (5) shall be multiplied by the following percentages in order to determine the TEA formula amount to be distributed to the qualifying city in each fiscal year:

(A) For the first fiscal year in which the qualifying city receives a distribution pursuant to this section, 1 percent of the amount determined in paragraph (5).

(B) For the second fiscal year in which the qualifying city receives a distribution pursuant to this section, 2 percent of the amount determined in paragraph (5).

(C) For the third fiscal year in which the qualifying city receives a distribution pursuant to this section, 3 percent of the amount determined in paragraph (5).

(D) For the fourth fiscal year in which the qualifying city receives a distribution pursuant to

## COUNTY CONSIDERATIONS

The following sections of this chapter discuss those areas of the Trial Court Funding Program having a direct monetary impact to an option county. These areas include the loss of existing \$60,000 grants provided for superior court judgeships; the loss of reimbursements for court related state-mandated and local reimbursement programs; the waiver of reimbursements for

existing outstanding state mandated test claims; the Proposition 4 spending limitation transfers; motor vehicle license fee restoration; and the no and low property tax provisions. Our objective for identifying and explaining these considerations is to assist counties in understanding provisions of the Trial Court Funding Program.

### §4.01

## STATE-MANDATED AND LOCAL REIMBURSEMENT PROGRAMS

Under Government Code Section 77203, option counties would give up the \$60,000 block grant reimbursement traditionally provided for superior court judgeships established prior to January 1, 1973. For the second half of the 1988-89 fiscal year, an option county will not be receiving the latter half (\$30,000) of the \$60,000 block grant. In addition, the county would waive its right to receive reimbursements for state-mandated and local reimbursement programs that relate to the trial courts.

We have provided two lists which identify court related state-mandated and local reimbursement programs an option county would have to waive. The first list identifies existing programs that must

be waived. The second list contains new mandates that may be subject to waiver in the future. These lists have been reviewed and agreed upon by the State Controller's Office and the Commission on State Mandates.

Of general concern to county officials is the possible loss of certain local reimbursement programs such as homicide trial costs and crimes committed in state prisons. All option counties will continue to receive reimbursements for these programs. The \$60,000 superior court judges block grant is the only local reimbursement program that must be waived under the Trial Court Funding Program.

### COURT RELATED STATE-MANDATED AND LOCAL REIMBURSEMENT PROGRAMS TO BE WAIVED

Legislation/Year	Description
Chap 1355/78	Compensation of Justice Court Judges
Chap 1357/78	*Guardianship and Conservatorship Filings
Chap 1368/78	*Custody of Minors
Chap 743/78	Judicial Arbitration
Chap 991/79	*MOSO Recruitments-Court Costs
Chap 1018/79	Superior Court Judgeships
Chap 48/80	Marriage Mediator Programs
Chap 644/80	*Judicial Proceedings
Chap 810/81	Parent/Child Counsel
Chap 1580/84	Expenses of Retired Judges
Various	\$60,000 Superior Court Judges Block Grant

\* Partially subject to waiver - portions related to 223 costs must be waived; non-court costs will continue to be reimbursed

## PENDING COURT RELATED MANDATES

### Legislation/Year

Chap 1335/87

### Description

Trial Court Delay Act

### WAIVER OF CLAIMS FOR STATE-MANDATED LOCAL PROGRAMS

While Government Code Section 77203 refers to court related mandates, Government Code Section 77203.5(a) addresses non-court related mandates.

Pursuant to Government Code Section 77203.5(a), an option county must waive, to the extent the Governor, in his discretion, determines that waiver be appropriate, all claims of reimbursement for state-mandated local programs not yet approved and received by the date this act is chaptered (September 16, 1988). The approving authorities for these claims are the State Board of Control, the Commission on State Mandates, or the courts.

A letter from the State Department of Finance addressed to the County Supervisors Association of California, dated November 28, 1988, contained the following interpretation of GC 77203.5(a):

"It is the initial Trial Court Funding Program opt-in resolution that triggers the mandate waiver on the part of a county. Different waiver provisions apply to counties that opt in initially for the latter half of the 1988-89 fiscal year than for counties that opt in initially for a fiscal year subsequent to 1988-89.

Initial opt-in for the latter half of 1988-89 would constitute a waiver of all claims for reimbursement based on any statute chaptered on or before September 16, 1988, that had not been filed in acceptable form with the Commission on State Mandates.

Initial opt-in for the latter half of 1988-89 also would constitute a waiver of all claims for reimbursement based on any statute chaptered after September 16, 1988, but before the county's opt-in resolution date, that had not been approved by the State Board of Control, the Commission on State Mandates or the courts.

Initial opt-in that is for a fiscal year subsequent to 1988-89 would constitute a waiver of all claims reimbursement that had not been approved by State Board of Control, the Commission on State Mandates or the courts.

Approval by the State Board of Control, Commission on State Mandates, or the courts deemed to mean approval by any one of the bodies in favor of the county's claim. Appeal such an approval by the State would not, in itself, negate the "approval"; however, success by the State on such an appeal would make the waiver issue with respect to that mandate claim moot.

The Governor would deem all mandate waiver to be "appropriate". Any county may, however, petition the Governor to exempt any mandate claim from the waiver requirement.

Section 77203.5(a) does not require the waiver of any claims arising from statutes chaptered prior to the passage of the county's initial opt-in resolution. Subsequent opt-in resolutions carry the requirement for a mandate waiver.

A mandate claim waived upon initial opt-in would be waived forever. Dropping out of the Trial Court Funding Program will not permit the claim to be reinstated.

Trial court mandates are separately treated under Section 77203."

### WAIVER OF CLAIMS RELATING TO THE TRIAL COURT FUNDING ACT OF 1988

Pursuant to Government Code Section 77203.5 (b), the decision by a county to opt into the program pursuant to GC 77300 shall constitute a waiver of any claim, cause of action, or action whenever filed, with respect to the Trial Court Funding Act of 1985, Chapter 1607 of the Statutes of 1985, or Chapter 1211 of the Statutes of 1986. Although no specific mandates were required

1985 Act, any claims for cost reimbursement by a county relating to the planning or implementation of the Trial Court Funding Act of 1985 must be

waived once the county opts into the Brown-Preseley Trial Court Funding Act.

## §4.02 PROPOSITION 4 LIMITATIONS

Pursuant to Government Code Section 77206, the decision by an option county to opt into the program constitutes an agreement by the county that the appropriations limit of the state shall be increased and the appropriations limit of the county shall be decreased to reflect the transfer to the state of financial responsibility for court services funded by proceeds of taxes. This transfer amount is equal to the net amount of increased state funding, including the regular block grants, the supplemental and the super block grants less the reduced funding of trial court mandates and superior court block grants (\$60,000).

The Department of Finance will determine the state's increase of appropriation limit for the initial year of participation. The Department of Finance will also assist each county participating in the program in calculating its appropriation limit transfer to the state. Option counties may be required to submit information to the state regarding their appropriation limit transfer pursuant to guidelines established by the Department of Finance.

If an option county ceases to participate in the program, the appropriation limits of the county and state shall revert to amounts that would have been applicable if no adjustment had been made.

## §4.03 MOTOR VEHICLE LICENSE FEE RESTORATION

Senate Bill 709 (Chapter 1211/87), effective July 1, 1988, repealed a special subvention of Vehicle License Fees (VLF) which the Legislature had previously provided for 31 no-property-tax cities (AB 1849, Cortese, 1984). These cities received approximately \$3.3 million from this subvention in the 1987-88 fiscal year.

Under SB 709, the cities' VLF reverted to counties; however, Assembly Bill 1197 (Chapter 944/88) amended Section 11005 of the Revenue and Taxation Code restoring this special subvention to cities, with provisions. AB 1197 phases out this subvention for those cities that will receive revenues from the no and low property tax

shift (discussed in Section 4.06). For every property tax dollar a city receives, it forgoes a VLF dollar; these freed up VLF dollars will go to pay for a new subvention for "eligible" no- and low-property-tax cities.

An "eligible city" is defined as any city which incorporated prior to June 5, 1987, and had an amount of property tax revenue allocated to it pursuant to Section 97(a) of the Revenue and Taxation Code in the 1987-88 fiscal year, which is less than 10 percent of the amount of tax revenues computed for the 1987-88 fiscal year utilizing the method described in Section 97.35(c) of the Revenue and Taxation Code.

## §4.04

## GENERAL CONSIDERATIONS

Three other provisions of current law involving bail schedules, certain bonds, and a zoo were affected by Assembly Bill 1197. They are discussed in more detail below.

## BAIL SCHEDULE INCREASES

The Trial Court Funding Act of 1985 required counties to turn over fees, fines and forfeitures to the State in return for block grants to support the courts. The new Trial Court Funding Program uses a "net block grant" concept. According to the Legislative Analyst, 30 counties could receive less revenue under this new program. AB 1197 added Penal Code Section 1463.28 to allow those 30 counties to capture, up to a specified annual limit, additional proceeds by increasing bail amounts until December 31, 1992. Thereafter, the additional revenues will be distributed to the county and cities according to present law.

## PRIVATE PURPOSE BONDS

AB 1197 prohibits a no- or low-property-tax city from receiving a property tax shift if, during the prior fiscal year, it used any revenues or issued bonds to construct, acquire, or develop certain types of facilities. These facilities include: sports facilities, convention or trade show facilities, air or water pollution control facilities, hydroelectric generating facilities, certain mass commuting vehicles, and industrial parks.

## OAKLAND ZOO

AB 1197 added Government Code Section 77200.5 which requires the State Controller to annually reduce the trial court block grants of Alameda and Contra Costa counties by \$50,000 each and transfer it to the William Knowland Zoo in the City of Oakland. AB 1197 also requires the East Bay Regional Park District (located in Alameda and Contra Costa counties) to shift a portion of its property tax revenues to the zoo.

## §4.05

## NO AND LOW PROPERTY TAX PROVISIONS

Assembly Bill 1197 (Chapter 944/88) amended Sections 97, 97.5, 98 and 98.6 and repealed and added Section 97.35 to the Revenue and Taxation Code which requires counties opting into the Trial Court Funding Program to shift property taxes to certain qualifying cities. Section 97.35 provides that most qualifying cities will receive 7% of the property tax revenues generated within its boundaries, phased in over a 7 year period. The shift begins in the 1989-90 fiscal year.

The 7% amount is referred to as the Tax Equity Allocation amount (TEA amount), and is calculated by applying a 7% rate to the total property tax revenue generated within the city. Most qualifying cities are entitled to receive an amount equal to one-seventh of the TEA amount or 1% progressively each year during the 7 year phase-in period.

A qualifying city during the 7 year phase-in period will receive the phase-in TEA amount or the amount it would receive under the current AB-8 property tax formula for that particular year, whichever is greater.

In comparing the phase-in TEA amount with the AB-8 formula amount, the AB-8 figure and the TEA amount will be adjusted annually for incremental growth. In the seventh year of the phase-in period and each year thereafter, each qualifying city will receive not less than 100% of the TEA amount.

Those cities involved in a property tax shift must also consider the effects of redevelopment agencies' property tax increment financing. AB 1197 requires county auditors to adjust the property tax shifts to neutralize redevelopment agencies' fiscal effects, using the following steps: First, the auditor determines the total amount of property taxes generated within the city; then the auditor subtracts the amount of property tax increment which goes to the redevelopment agency (less any pass-through payments, both cash and in-kind which the redevelopment agency gives to other local agencies). This difference becomes the amount which the auditor calculates as the city's property tax shift.

AB 1197 provides for other factors in calculating a city's property tax shift.

rate or base of any general or special tax, then the county auditor must calculate the amount of tax revenue which the city did not collect in the first fiscal year following the reduction. That amount becomes a permanent offset against the city's property tax shift. Secondly, cities having dependent special districts will be subject to a special limit since these districts already receive shares of local property taxes. The county auditor must annually calculate any amount of property tax revenues which these dependent districts receive that is greater than the amount they received in the 1985-87 fiscal year. The auditor subtracts the difference from a city's property tax shift. The auditor must also determine if the TEA amount would result in a city having proceeds of taxes in excess of its appropriation limit. If the city exceeds its appropriation limit, the auditor shall reduce the TEA amount on a dollar-for-dollar basis, by the amount which exceeds the city's appropriation limit.

The auditor may assess each city its proportional share of the actual costs of making the calculations required by the TEA formula, and may deduct that assessment from the amount allocated pursuant to the TEA amount.

Because of unique circumstances, certain counties were given special consideration under AB 1197 to make participation in the Trial Court Funding Program more equitable for all counties.

- \* Riverside County is allowed to negotiate over the property tax shift to no- and low-property-tax cities when a no- or low-property-tax city withdraws from county fire protection operations.

- \* Mono County is allowed to shift only 6% of local property tax revenues to the City of Mammoth Lakes over six years instead of 7% over seven years.

- \* Ventura County is allowed to shift only 4% of local property tax revenues to no- and low-property-tax cities over four years. In addition, Ventura County will have a guarantee under law that if the difference between the county's trial court block grant minus the property tax transfers is less than \$5 million as adjusted by the cost of living adjustment (COLA), the county will receive a special subvention from Vehicle License Fee monies to bring the county's net benefit up to \$5 million.

- \* The City of Foster City in San Mateo County is excluded from any property tax shift.

It must be emphasized that this is a literal interpretation of the no- and low-property-tax provisions relating to those counties opting into the Trial Court Funding Program. Should legislation arise in this area and new bills become effective, we will inform counties of the impact upon this program.

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Los Angeles County Municipal Courts  
Planning and Research Unit

A Review of  
The Lockyer-Isenberg Trial Court  
Funding Act of 1997

by

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October 17, 1997

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## I. INTRODUCTION

After twelve years of legislative activity on state trial court funding, the Legislature and the Governor have agreed on a comprehensive measure that relieves counties of their responsibility to fund court operations and makes the state solely responsible. AB 233 (Escutia and Pringle) was passed by the Legislature and sent to the Governor on the last day of this year's legislative session. The Governor signed the measure on October 10, 1997 to become effective on January 1, 1998, as the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850, Stats. of 1997).

The bill represents the most significant change in trial court organization since the early 1950's, when the Municipal and Justice Court Act of 1949 implemented constitutional amendments which restructured California's state trial court system. For more than 40 years, counties have had the responsibility to fund the trial courts. This relationship resulted in a trial court administrative structure which integrated court funding, budgeting and support services with county processes.

AB 233 ends this longstanding relationship and lays the foundation for a new operating framework for the judicial branch. Fundamental changes in trial court funding and budgeting processes will occur quickly. The bill's impact on court employees and on county-provided services to the trial courts will be more gradual.

AB 233 includes many provisions necessary for the transition from county to state-based budgeting. However, we can anticipate legislation, rules of court and other administrative measures in the near future to further specify how the trial courts will operate under the new structure. In addition, we can anticipate urgency clean-up legislation to correct any drafting errors in AB 233 and to add necessary statutory cross-references.

This memorandum summarizes and analyzes the major provisions of AB 233. It discusses redefined state and county funding obligations, the new state budgeting process, local trial court budget administration and 1997-98 fiscal year funding. It also describes the two state task forces established by the bill: the Task Force on Trial Court Employees and the Task Force on Court Facilities.

In addition to the provisions discussed in this memorandum, AB 233 includes several sections which significantly raise filing fees in civil actions. These new fees will take effect on January 1, 1998.

## II. STATE AND COUNTY FUNDING RESPONSIBILITIES

### A. COURT OPERATIONS

The term "court operations" has been used since 1988, when the State increased its role in trial court funding by providing block grants to each county for court expenditures. To ensure that state funds were appropriately spent on trial courts, the Legislature developed the term "court operations" to specify which court-related expenditures were payable with state funds. Although formulas for allocating state funds to the counties changed over time, the term "court operations" continued to serve this purpose.

Now that the state is responsible under AB 233 for fully funding the trial courts, the term is retained but is used instead to define the scope of the state's obligation. New Government Code §77200 provides that as of July 1, 1997, the state shall assume sole responsibility for the funding of court operations, as defined by court rule on July 1, 1996 and by statute. That section also provides that the state shall "be responsible for the cost of court operations incurred by the trial courts in the 1997-98 fiscal year and subsequent fiscal years."

Government Code §68073 is amended to eliminate the express county obligation to fund court operations to the extent the state does not do so. Section 68073 no longer authorizes a court to order a county to provide for court operations when funding levels fall below what is adequate. Similarly, new §§77201 and 77201.1 of the Government Code provide that as of July 1, 1997, no county is responsible for funding court operations as defined by court rule on July 1, 1996 and by statute.

Government Code §77003 defines "court operations" to include:

- 1) Salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers. "Subordinate judicial officers" includes all commissioner or referee positions created before July 1, 1997, and any staff providing direct support to those commissioners. However, for a commissioner position created after July 1, 1997, the commissioner and supporting staff are not "subordinate judicial officers" within the definition of "court operations", except as approved by the Judicial Council, subject to available funding;
- 2) Salaries, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute;
- 3) Those marshals, constables, and sheriffs the court deems necessary for court operations;

- 4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code;
- 5) Services and supplies relating to court operations;
- 6) Collective bargaining under the Meyers-Milius-Brown Act with respect to court employees specified in Section 3501.5; and,
- 7) Actual indirect costs for county general services attributable to court operations. (Specifically excluded are specified law library operations; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.)

Rule 810 of the California Rules of Court lists the elements included in "court operations" with greater specificity. Although collections enhancements are included in the rule as court operations, they are specifically excluded under amended Government Code §77003. Rule 810 as it read on July 1, 1996 is attached as an Appendix.

AB 233 states that the Legislature intends to continue to define "court operations" as currently established by law but that issues remain regarding which items of expenditure are properly included within the definition. It further states that the Legislature intends to reexamine this issue during the 1997-98 fiscal year.

## B. COURT FACILITIES

Court facilities are not within the definition of "court operations." Counties will continue to be responsible, under amended Government Code §68073, for providing necessary and suitable facilities for judicial and court support positions created prior to July 1, 1996. Whether facilities are necessary is to be determined by considering the court's reasonable needs and the county's fiscal condition. Under §68073, a trial court will have the authority to order county officers to provide facilities for positions created prior to July 1, 1996, upon the county's failure to do so.

For judgeships created during the 1996 legislative session, new Government Code §77654(i) obligates each county to provide appropriate facilities, "provided that the board of supervisors agrees that new facilities are either not required or that the county is willing to provide funding for court facilities." This applies to municipal and superior court judgeships which were created statewide by Chapter 262 of the Statutes of 1996.

New Government Code §77650 establishes a state Task Force on Court Facilities to study and make recommendations regarding options for future funding of court facility maintenance, improvements, and expansion. The Task Force's final recommendations to the Judicial Council, the Governor and the Legislature are due July 1, 2001.

Pending completion of the Task Force's work, §77654(i) provides that unless a court and a county otherwise agree, the state shall assume responsibility for suitable and necessary facilities for judicial officers and support staff for any judgeships authorized during the period from January 1, 1998 to June 30, 2001.

Court facilities are defined in new subdivision (e) of §68073 as:

- Court rooms;
- Judges' chambers;
- Rooms for the attendants of the court; and,
- Sufficient heat, ventilation, air-conditioning, light, and fixtures for those rooms and chambers.

### C. FURNITURE, FURNISHINGS AND EQUIPMENT

New Government Code §68073.1 provides that all furniture, furnishings, and equipment used solely by a trial court on June 30, 1997, become the property of the court, unless the county is prohibited from transferring title by contract, agreement, covenant, or other provision in the law. In addition, counties must continue to provide any other furniture, furnishings, or equipment made available by the county to the court on June 30, 1997, unless otherwise agreed to by the court and the county.

For anything transferred or made available to the court under §68073.1, the court is responsible for any rental or lease obligation as well as repair, maintenance, and replacement.

## III. THE STATE TRIAL COURT BUDGET

The principal source of funding for court operations is the Trial Court Trust Fund. In addition, there are two special funds to address specific trial court-related needs: the Trial Court Improvement Fund and the Judicial Administration Efficiency and Modernization Fund.

### A. TRIAL COURT TRUST FUND

Trial Court Trust Fund monies come from three sources: (1) state General Fund appropriations, (2) civil filing fee revenue and (3) a fixed contribution from each county. The General Fund portion of the Trust Fund is appropriated by the Legislature. Civil filing fee revenue is collected by the courts and transmitted by the counties to the Trust Fund pursuant to Government Code §68085.

Each county's fixed contribution is required by new Government Code §§77201 and 77201.1. The amount of this contribution is based on two factors: the county's expenditures on court operations in fiscal year 1994-95 and the state's share of criminal fine and forfeiture revenue collected in that county during fiscal year 1994-95.

Historically, criminal fine and forfeiture revenue was apportioned between counties, cities and other local entities. In recent years, state trial court funding statutes required that a portion of this revenue instead be sent to the state. AB 233 amends the fine and forfeiture distribution provisions of Penal Code §1463.001 and related sections, eliminating the share apportioned to the state and restoring it to local entities, including counties. The state's resulting revenue loss is substantially offset by the portion of the counties' fixed contribution to the Trust Fund that is based on the state's share of fine and forfeiture revenue in 1994-95.

Future increases in the Trial Court Trust Fund would most likely come from the State General Fund, although there may be some growth in civil filing fee revenue. The Legislature and the Governor will determine the General Fund appropriation during the annual state budget process, taking into consideration the trial court budgets developed under the process described in section IV (page nine) of this memorandum. General Fund appropriations could also be made for emergency needs or other purposes during a fiscal year. AB 233 states the Legislature's intent that the counties' contribution will not be increased in the future.

Government Code §77201 sets and governs county contributions to the Trial Court Trust Fund for the 1997-98 fiscal year. That section is repealed as of July 1, 1998 and is replaced with new §77201.1, which will set and govern county contributions to the Trial Court Trust Fund for the 1998-99 fiscal year and thereafter.

The principal difference between the two provisions is that §77201.1 reduces the counties' required contribution by \$350 million after the 1997-98 fiscal year. A portion of this reduction provides financial relief to the 20 least populous counties by eliminating that part of their fixed contribution that is based on expenditures.

The \$350 million reduction was amended into the bill late in the legislative session in conjunction with a proposal to raise the state's General Fund contribution to the Trial Court Trust Fund by a like amount in 1998-99. The actual General Fund contribution for 1998-99 will be determined as the Governor and the Legislature develop the state budget next year.

The portion of a county's fixed contribution based on 1994-95 fine and forfeiture revenue is also subject to reduction under §77201.1(b)(5). Beginning in 1998-99, a reduction is authorized under specified circumstances where a county's portion of fee, fine and forfeiture revenue falls below a specified level.

## B. TRIAL COURT IMPROVEMENT FUND

The Trial Court Improvement Fund is established by Government Code §77209 as a source of supplemental funding for the trial courts. The Fund includes allocations from



the Trial Court Trust Fund and revenue from other sources. (Section 77207, which formerly established the Fund, is repealed).

#### 1. One Percent of the Annual Appropriation for the Trial Courts

Before making allocations from the Trial Court Trust Fund for trial court budgets, the Judicial Council must deposit one percent of the amount appropriated for trial court operations into the Trial Court Improvement Fund, pursuant to Government Code §77209. At least one-half of this amount must be retained as a reserve. This reserve may be allocated to trial courts for urgent needs. Any part of the reserve that remains after March 14 of each year may be allocated for other purposes.

Up to one-quarter of this one percent may be allocated by the Judicial Council for statewide projects or programs for the benefit of the trial courts, and up to one-quarter may be allocated to trial courts which have fully implemented the requirements of Rule 991 of the California Rules of Court relating to trial court coordination. The Judicial Council is authorized by §77209 to set additional criteria for allocation to courts which have implemented the requirements of Rule 991.

#### 2. Fine and Forfeiture Deposits for Court Automation

Government Code §68090.8 previously established an automation fund for municipal courts in each county. Two percent of all criminal fines, penalties and forfeitures collected by the courts in the county was deposited into this local fund to be used exclusively to pay the costs of automating municipal court recordkeeping systems for criminal case processing and accounting.

AB 233 amends §68090.8 to instead require the two percent to be deposited into the Trial Court Improvement Fund. The Judicial Council, under section 77209, will allocate these funds for automated recordkeeping system improvements pursuant to §68090.8 and in furtherance of Rule 991 of the California Rules of Court. The funds are no longer restricted to municipal court use or to criminal case recordkeeping systems.

The statute specifically provides that the fund is available for the development of automated data collection through case management systems, as well as case processing and accounting systems. Section 68090.8(a)(3) is added to state that:

Automated data collection shall provide the foundation for planning, research, and evaluation programs that are generated from within and outside of the judicial branch. This system shall be a resource to the courts, the Judicial Council and its committees, the Administrative Office of the Courts, the Legislature, the Governor, and the public.

During the developmental stage and prior to the implementation of the system, the Legislature is required to make recommendations to the Judicial Council as to the breadth and level of detail of the data to be collected.

The funds must be allocated to the "individual courts of the counties . . . in an amount not less than the revenues collected in the local 2 percent automation funds in 1994-95." Any remainder of the monies deposited in the Trial Court Improvement Fund will be allocated by the Judicial Council consistent with the requirements of §77209.

### 3. Other Fine and Forfeiture Deposits

New Government Code §77205 provides that county fine and forfeiture revenue which exceeds the amount the county is required to contribute to the Trial Court Trust Fund pursuant to Government Code §77201(b)(2) is to be split equally between the county and the state. The state's share will be deposited into the Trial Court Improvement Fund.

### 4. Management of the Fund

Government Code §77209 charges the Judicial Council with administering expenditures from the Trial Court Improvement Fund, but authorizes delegation of this task to the Administrative Office of the Courts. Fund expenditures are governed by the procedures in §77209 and by those specified in new Government Code §77213 relating to the Judicial Administration Efficiency and Modernization Fund.

Expenditures may be made to individual trial courts, or directly to vendors responsible for implementing approved projects. Section 77209 requires the Judicial Council to report to the Legislature annually on the use of the Trial Court Improvement Fund and make appropriate recommendations regarding the Fund. Any unencumbered funds at the end of the fiscal year must be appropriated to the Improvement Fund in the following fiscal year.

## C. JUDICIAL ADMINISTRATION EFFICIENCY AND MODERNIZATION FUND

New Government Code §77213 establishes the Judicial Administration Efficiency and Modernization Fund, as a separate fund administered by the Judicial Council on behalf of the trial courts. Unlike provisions governing the Trial Court Improvement Fund, there is no requirement that the Judicial Council deposit a portion of the amount appropriated generally for the trial courts into this fund. Nor are there provisions for revenue deposits into the Fund. It appears that deposits into this fund will be by direct legislative appropriation, although there is no such appropriation for the current fiscal year.

## 1. Fund Expenditures

Fund expenditures may be made for promoting improved access, efficiency, and effectiveness in trial courts that have unified to the fullest extent permitted by law. Expenditures may also be made to implement projects approved by the Judicial Council. Such projects may include, but are not limited to, the following:

- Supporting payment for the cost of judicial officers or court staff who participate in in-state education programs, or to support local trial court education programs;
- Improved technology, including information systems programming or equipment upgrades that meet standards approved by the Judicial Council and that promote efficiency and access to justice, or other technology projects that promote access, efficiency, or security;
- Retaining experienced jurists by establishing incentives of enhanced judicial benefits and educational sabbaticals, not to exceed 120 days every five years, as provided for by rules of court adopted by the Judicial Council; and,
- Acquiring improved legal research through the use of law clerks or technology.

(Section 77213 includes a provision requiring the Judicial Council to "develop a plan which will permit the extension of the benefits to all judges of the state at such time when the trial courts of all counties have unified to the maximum extent permitted by law." It is not clear to which benefits this language relates, since it is placed in subdivision (c)(1), which refers only to the provision regarding education programs. This placement appears to have been inadvertent and may be changed by cleanup legislation so that the reference is instead to the provision regarding enhanced judicial benefits.)

## 2. Management of the Fund

The Judicial Council is required to annually adopt criteria, timelines, and procedures for the allocation of funds. The Council may allocate funding to pay program costs directly or contract with courts. It may permanently reallocate funding to courts subject to the following limitations:

- 1) Not more than 20 percent of the fund may be permanently reallocated for projects to support education programs for judicial officers and support staff;
- 2) Not more than 40 percent of the fund may be permanently reallocated to the trial courts for any other purpose approved by the Judicial Council; and,

- 3) The Judicial Council shall retain at least 40 percent of the funding to support annual allocations for improvement projects and programs in qualifying courts.

Any funds in the Judicial Administration Efficiency and Modernization Fund that are unencumbered at the end of the fiscal year will be retained in the Fund for the following fiscal year.

#### IV. TRIAL COURT BUDGET DEVELOPMENT AT THE STATE LEVEL

For more than 40 years, trial court budgets have been developed and adopted at the county level consistent with the counties' statutory responsibility to fund the trial courts. During the last four years, a second trial court budget process was established at the state level by the newly created Trial Court Budget Commission.

Pursuant to this process, the Budget Commission began requiring the trial courts to annually submit budget requests to the Commission for review and approval. Since then, the Commission has approved trial court budgets at the state level for each succeeding fiscal year through 1998-99. However, the state did not fully fund the resulting budgets and the separate county budget process continued to be determinative. Court expenses were charged against county-adopted budgets and paid out of combined state and county funds. AB 233 now makes this state budget process controlling and eliminates the counties' role in establishing and adopting budgets for court operations.

##### A. BUDGET DEVELOPMENT SUMMARY

The shift from county to state responsibility adds an intermediate step to the budget process. In the county-funded system, trial courts followed a process similar to that followed by county departments. The courts submitted their budget requests directly to the county as the funding agency, and then negotiated their budgets with county representatives.

Under the system implemented by AB 233, the trial courts, through the Trial Court Budget Commission and the Judicial Council, will collectively develop a statewide trial court budget request which will be submitted to the state and negotiated by Judicial Council representatives. The trial courts will not individually negotiate directly with state representatives.

The statewide budget request will be based on court budget requests submitted to the Trial Court Budget Commission and reviewed and approved as described below. The resulting statewide appropriation for the trial courts will be allocated to the trial courts in each county by the Judicial Council on recommendation of the Budget Commission.

The current budget development process at the state level includes the following steps:

- 1) The trial courts prepare and submit budget requests to the Trial Court Budget Commission, which reviews the requests and sends proposed budgets to the trial courts;
- 2) The trial courts may submit appeals of the proposed budgets to the Budget Commission which reviews the appeals and recommends a final trial court budget to the Judicial Council;
- 3) The Judicial Council adopts a final trial court budget request, submits it to the governor and negotiates for its inclusion in the Governor's Budget for presentation to the Legislature;
- 4) The Governor presents the proposed state budget, including a proposed appropriation for the trial courts, to the Legislature;
- 5) The Legislature adopts a statewide trial court appropriation to the Trial Court Trust Fund in the State Budget Act and presents the Act to the Governor for approval; and,
- 6) The Judicial Council, on recommendation of the Budget Commission, allocates the Trust Fund appropriation to the trial courts, reconciling any differences between Commission-approved budgets and the appropriation.

Pursuant to new Government Code §77202, this allocation must be in a manner that:

- Best ensures the ability of the courts to carry out their functions;
- Promotes implementation of statewide policies; and,
- Promotes the immediate implementation of specified efficiencies and cost saving measures in court operations.

These efficiencies and cost savings measures are the same as the court coordination elements listed in Government Code §68112. Section 77202 further provides that allocations must "reward each trial court's implementation of [these] efficiencies and cost saving measures."

## B. TRIAL COURT BUDGET COMMISSION

The Trial Court Budget Commission was established in 1992 pursuant to Government Code §68502.5. That section specifies the Commission's authority and requires the Judicial Council to provide by rule for appointment of Commission members and to set deadlines for Commission responsibilities. AB 233 amends §68502.5 to provide that

the Commission's authority pursuant to that section is exercised under the direction and with the approval of the Judicial Council.

### C. RULES ON BUDGETING AND RECORDKEEPING

Government Code §77202 charges the Judicial Council with promulgating rules governing practices and procedures for budgeting in the trial courts in a "manner that best ensures the ability of the courts to carry out their functions." Government Code §77206 (formerly §77205) requires the Judicial Council to adopt appropriate rules for budget submission, budget management, and reporting of revenues and expenditures by each court. The Judicial Council is also required to provide for transmission of revenue and expenditure summary information to the state Controller. The Controller is responsible under §77206 for maintaining appropriate regulations for recordkeeping and accounting by the courts.

### V. LOCAL BUDGET ADMINISTRATION

AB 233 creates a new framework for local trial court budget administration. County funding responsibility was the basis of the unique administrative relationship between the counties and the courts. Although the trial courts maintained their independence as part of the judicial branch, court budgeting and support services were integrated with county processes.

AB 233 ends this legal relationship and disengages the counties from budget and administrative processes. Counties will no longer be required to adopt operating budgets for the trial courts. Budgets will be self-administered by the trial courts and expenditures will not be subject to Board approval. The trial courts, subject to Judicial Council rules, will develop substitute processes which are more insular than before and less reliant on county infrastructure.

In addition, the trial courts will no longer turn to the counties but will instead look to the Judicial Council and the Legislature to respond to financial needs which arise during the year. To aid in the transition, counties will continue to provide support services until June 30, 1999, but will not be required to do so beginning with the 1999-2000 fiscal year.

#### A. TRIAL COURT OPERATIONS FUND

Section 77009 requires each board of supervisors to establish in the county treasury a "Trial Court Operations Fund" into which state funds are to be deposited. Accounts must be established in the Operations Fund for each trial court in the county, except that a single account may be established for courts which have a unified budget.

In a county such as Los Angeles, where court budgets include appropriations for expenditures administered on a county-wide basis, separate accounts are to be

established and funded from those appropriations. Pursuant to §77009, this includes accounts for such items as centralized data processing, planning and research and court security.

Trial Court Trust Fund distributions to the Operations Fund will be made quarterly to the courts in each county pursuant to amended Government Code §68085. The Controller is required to transmit installment payments on July 15, October 15, January 15, and April 15 of each year. However, the first installment is due 10 days after AB 233 becomes effective.

#### 1. Expenditures

Section 77009 restricts the use of state funding to "court operations" and support services purchased by the trial courts. Expenditures from an account will be made as authorized by the presiding judge of the court or a designee. The county auditor-controller must make the payments upon such authorization; board of supervisors approval is not required. In addition, any interest received on investment of money deposited in the Trial Court Operations Fund as required by §77009 must be used for trial court operations purposes.

#### 2. Administration Expenses

Under §77009, counties shall charge each court for reasonable administrative expenses associated with the operation of the Trial Court Operations Fund, on a pro rata basis in proportion to the total amount allocated to each court in the fund. In addition, counties may bill the courts for indirect costs for county general services attributable to court operations. The costs billed by the county pursuant to this subdivision cannot exceed the county costs incurred in providing similar services to county departments or special districts. The counties may not charge interest against the fund.

#### 3. Procedures

The Judicial Council is responsible under §77009(h) for establishing procedures for payment of trial court operations expenses incurred on or after July 1, 1997. Adoption of these procedures must be with the concurrence of the Department of Finance and the Controller's office. The Judicial Council is also required to study alternative methods for establishing and managing the Trial Court Operations Funds. It must report its findings and recommendations to the Legislature by November 1, 1998.

#### 4. Carryover of Unexpended Funds

New Government Code §77203 authorizes the Judicial Council to permit a trial court to carry unexpended funds over from one fiscal year to the next, provided that the court

carrying over the funds has fully implemented all provisions of Rule 99.1 of the California Rules of Court as it read on July 1, 1996, regarding trial court coordination.

## B. TRIAL COURT MANAGEMENT

The shift to state responsibility for court funding raises the question of how the courts will be managed under the new structure. AB 233 requires the Judicial Council to promulgate rules by July 1, 1998, to establish a decentralized system of trial court management. New Government Code §77001 requires that these rules ensure:

- 1) Local authority and responsibility of the trial courts to manage day-to-day operations;
- 2) Countywide administration of the trial courts;
- 3) Trial court input into the Judicial Council budget process;
- 4) Equal access to justice throughout California utilizing standard practices and procedures whenever feasible;
- 5) Authority and responsibility of trial courts to manage all of the following, consistent with statute, rules of court, and standards of judicial administration:
  - a) Annual allocation of funding, including the authority to move funds between functions or line items;
  - b) Local personnel systems, including the promulgation of personnel policies;
  - c) Processes and procedures to improve court operations and responsiveness to the public; and,
  - d) Establishment of a means of selecting presiding judges, assistant presiding judges, executive officers or court administrators, clerks of court, and jury commissioners.

In addition, AB 233 states the Legislature's intent to acknowledge the need for strong and independent local court financial management, including encouraging the adoption by the Judicial Council of a Trial Courts Bill of Financial Management Rights, to be approved no later than January 1, 1998. This bill of management rights "shall minimize the rules and regulations in the area of financial affairs to those sufficient to guarantee efficiency, but shall give strong preference to the need for local flexibility in the management of court financial affairs."



## C. TRIAL COURT AUDITS

New Government Code §77206 authorizes the Controller to conduct and publish financial and fiscal compliance audits of court revenue and expenditure reports, as requested by either the Legislature or the Judicial Council. The results of these audits must be reported to the Legislature. Section 77009 specifically extends this authority to audits of the Trial Court Operations Funds.

These audit provisions replace those in repealed Government Code §71383. That section required accounts of each trial court to be audited by the county auditor at least biennially.

## VI. COUNTY-PROVIDED SERVICES

### A. Continuation of County Services at Least Through 1998-99

County services provided to the trial courts on July 1, 1997 must continue to be provided under new Government Code §77212 during the 1997-98 and 1998-99 fiscal years. These services include, but are not limited to:

- Auditor-controller services;
- Coordination of telephone services;
- Data processing and information technology services;
- Procurement services;
- Human resources services;
- Affirmative action services;
- Treasurer-tax collector services;
- County counsel services;
- Facilities management; and,
- Legal representation.

This section also establishes a procedure for a county to give notice to a court that it will no longer provide a particular service in the future. The county must give notice at least 90 days prior to the end of a fiscal year and the termination of service shall be effective only upon the first day of the succeeding fiscal year. The notice procedure is authorized on or after July 1, 1998. However, the county must cooperate with the court to ensure that a vital service is available to the court, either from the county or another service provider.

In addition, under the same provisions, a court may give notice to the county that it will no longer use a county service. A court may not terminate a service where computer, data processing or other equipment was acquired with long-term financing which is dependent upon court support.

## B. Authorized Charges for County Services

A county may bill trial courts for services described in §77212 and in Government Code §77003 ("court operations"), including indirect services. The costs billed by the county may not exceed the costs incurred by the county in providing similar services to county departments or special districts.

## VII. THE 1997-98 STATE TRIAL COURT BUDGET

Although AB 233 does not take effect until January 1, 1998, it will determine the amount available for the trial courts for the 1997-98 fiscal year. In effect, the counties are advancing money for trial court operations during the first six months of this fiscal year and will deduct their expenditures from the full-year amount they are required to transmit to the Trial Court Trust Fund under Government Code §77201.

Each county must submit a report to the Department of Finance before February 15, 1998, stating the amount it expended during the first six months of the fiscal year on court operations as defined by California Rules of Court Rule 810 on July 1, 1996 and Government Code §77003. The Department of Finance is required to reduce the county's contribution to the Trust Fund accordingly and notify the trial courts, the county and the Judicial Council of the adjustment pursuant to §77201(g).

The following table shows the statewide appropriation for trial courts in the 1997-98 Budget Act, as amended (Chapters 282 and 859, Stats. of 1997), and the amount of each funding component.

Trial Court Funding for 1997-98	
General Fund Appropriation	\$ 191,488,000
Filing Fees	156,000,000
Filing Fee Increase - 6 months	44,000,000
Fixed County Contribution (Fines & Forfeitures)	291,415,000
Fixed County Contribution (Expenditures)	<u>890,000,000</u>
Total Trial Court Funding	<u>\$1,572,903,000</u>

Of the \$1.573 billion appropriated to the Trial Court Trust Fund, \$18.4 million is set aside for expenditures on assigned judges. The remaining \$1.555 billion is appropriated for court operations.

Of this amount, \$32.8 million is set aside for expenditures on court interpreters which will be administered under the direction of the Judicial Council. An additional, \$7.9 million is set aside in the Trial Court Improvement Fund as a reserve for urgent court.

needs. This leaves \$1.514 billion to be allocated by the Judicial Council and Trial Court Budget Commission to the trial courts.

Preliminary analysis by the Administrative Office of the Courts indicates that the amount available for distribution to the trial courts will be slightly greater in 1997-98 than trial court expenditures on court operations in 1996-97. In addition, the Administrative Office of the Courts has reported that projected fine and forfeiture revenue increases for 1997-98 may result in \$11.8 million in increased revenue to the Trial Court Improvement Fund.

There are, however, several uncertainties that raise the possibility that there may be less funding for the current fiscal year than anticipated. These uncertainties include whether filing fee and fine and forfeiture revenue will meet projections, whether court interpreter costs will exceed the amount set aside in the budget, and to what extent counties will be able to reduce their required contributions to the Trust Fund through procedures established in Government Code §77201, which are discussed below. The Judicial Council and Trial Court Budget Commission will soon determine how the 1997-98 trial court appropriation will be allocated.

## VIII. ADJUSTING COUNTY CONTRIBUTIONS

New Government Code §77201 authorizes adjustment of a county's fixed contribution to the Trial Court Trust Fund based on the county's 1994-95 expenditures on court operations. The contribution may either be reduced or increased pursuant to the procedures discussed below. Any adjustment made pursuant to these procedures is effective for the 1997-98 fiscal year. New Government Code §77201.1(b)(4) makes these adjustments applicable to 1998-99 and thereafter.

### A. REDUCING A COUNTY'S CONTRIBUTION

The process of reducing a county's contribution is initiated by the county filing a declaration challenging the base-year amount with the Department of Finance pursuant to §77201(c)(1). The county must send a copy to the trial courts in the county and the trial courts may then submit comments to the Department of Finance.

The Department of Finance must determine the validity of the challenge and, if warranted, reduce the county's obligation accordingly. A county disagreeing with the Department's findings may request the Controller to conduct an audit of the facts asserted in the declaration. If the audit verifies these facts, the Department must reduce the county's obligation. The cost of the audit is paid by the county, but is reimbursable by the State, if the Controller finds in favor of the county.

A county's declaration must be submitted by February 15, 1998, and may be based on any one of several grounds for relief:

- The county incorrectly reported county costs as court operations in 1994-95, resulting in an excessive amount the county is required to submit to the state;
- The amount the county is required to submit to the state includes extraordinary one-time expenditures for court operation costs in 1994-95, or;
- The amount the county is required to submit to the state includes expenses that were funded from grants or subventions, for court operation costs that could not have been funded without those grants or subventions being available.

If the county's challenge is successful, the county must provide any service for which an adjustment is made at no charge to the court, if the county is required to provide that service at no cost to the court by any other provision of law.

#### B. INCREASING A COUNTY'S CONTRIBUTION

The process of increasing a county's contribution is initiated by a court submitting to the Department of Finance a declaration pursuant to §77201(c)(2) that the county failed to report court operations costs in the 1994-95 fiscal year. The declaration must be filed by February 15, 1998, and a copy must be sent to the county in which the court is situated. The county may then submit comments to the Department of Finance regarding the court's challenge.

The Department of Finance must then determine and certify which costs, if any, identified in the court's declaration should have been reported by the county as court operation costs in 1994-95 and whether this failure resulted in the amount the county is required to submit being too low.

The Department of Finance must notify the trial courts and the county of its decision. The county must then notify the Department whether the county will assume responsibility for any costs that the county failed to report. If the county does not assume this responsibility, its fixed contribution will be increased. The notification must be made by the earlier of 30 days after the Department of Finance's notification or June 30, 1998.

If a county's contribution is increased under these provisions, pursuant to §77201(c)(2) it is no longer required to continue to provide services for which the contribution amount was adjusted.

## C. ADJUSTMENT FOR LOCAL JUDICIAL BENEFITS COSTS

County-provided judicial benefits are within the definition of "court operations" and therefore are currently payable from state allocations to a court's account in the Trial Court Operations Fund. However, Government Code §77201(c)(3) imposes a new procedure by which the cost of such benefits will become a county responsibility.

Section 77201(c)(3) requires a county to submit to the Department of Finance by February 15, 1998, a declaration stating whether the county's fixed contribution to the Trial Court Trust Fund pursuant to Government Code §77201(b)(1) includes local judicial benefits costs and, if so, in what amount. The trial courts may comment on the validity of the statements in the county's declaration. If the Department of Finance verifies that local judicial benefits costs are included, then it must reduce the amount the county is required to transmit to the Trust Fund by an amount equal to the cost of those judicial benefits, and "the county shall continue to be responsible for the cost of those benefits."

If a county disagrees with the Department of Finance's findings, the county may request that the Controller conduct an audit to verify the facts in the county's declaration. The Controller must conduct the requested audit at the county's expense. If the Controller's audit verifies the facts in the county's declaration, the county's required contribution to the Trust Fund must be reduced and the county will be reimbursed for the cost of the audit.

## IX. TASK FORCE ON TRIAL COURT EMPLOYEES

AB 233 provides for the establishment of a Task Force on Trial Court Employees charged with recommending "an appropriate system of employment and governance for trial court employees." Government Code §77601 provides for 18 members on the Task Force, including four members representing the trial courts. Although Government Code §77604(a) provides that the Task Force is to be appointed by October 1, 1997, it is anticipated that appointments will be made near January 1, 1998, when AB 233 will become effective.

### A. TASK FORCE DUTIES

The Task Force is charged with, but not limited to, several duties specified in Government Code §77603. The Task Force is required to examine and outline issues relating to alternative personnel structures for trial court employees. These include court employment, county employment with the concurrence of the county and the courts in the county, state employment with the concurrence of the state and the courts in the county, and other options. The Task Force is also required to develop a method for submitting the issue of employment status to an advisory vote of trial court employees in each county.

Ultimately, the Task Force must recommend a personnel structure for trial court employees. The recommendations are to be made recognizing the need for achieving the concurrence of the affected parties, protecting the rights of employees under the current system, and minimizing disruption of the trial court work force.

#### B. TIMETABLE

The Legislature intends to enact a personnel system for trial court employees that is to take effect on or before January 1, 2001. The Task Force must submit an interim report with findings and recommendations to the Judicial Council, the Legislature, and the Governor by January 30, 1999. The report must be circulated for comment to the counties, the judiciary, the Legislature, the Governor, and local and state employee organizations.

The Task Force's final report to the Judicial Council, the Legislature and the Governor is due January 1, 2000. The report is to include findings and recommendations relative to establishing a system of uniform court employee classifications, which may provide for local flexibility. These classifications are to include duty statements, minimum qualifications, and salary ranges, and are to be sufficiently broad to give employees and their managers maximum flexibility to meet both employee and court needs.

#### C. TASK FORCE MEMBERSHIP

Task Force members include:

- Four trial court representatives, appointed by the Chief Justice, representing one suburban, one rural, and two urban courts;

- Four representatives of counties, appointed by the Governor from a list of nominees submitted by the California State Association of Counties, representing urban, suburban, and rural counties;

- Three representatives appointed by the Senate Rules Committee, at least two of whom represent trial court employee organizations;

- Three representatives appointed by the Speaker of the Assembly, at least two of whom represent trial court employee organizations;

- The Director of the Department of Personnel Administration or a designee;

- The Chief Executive Officer of the Public Employees' Retirement System (PERS); or a designee; and,

- The Director of Finance or a designee.

The Chief Justice is required to designate a justice of the court of appeal as the nonvoting chairperson of the Task Force.

#### D. TASK FORCE STAFF

The Judicial Council is designated by Government Code §77602 to provide staff support for the Task Force. Upon request of the Judicial Council, the Department of Personnel Administration, the Department of Finance, and the Legislative Analyst may also be called upon for staff support. Section 77602 also states that the California State Association of Counties is encouraged to provide additional staff support.

#### E. NO INTENT TO REDUCE SALARY OR BENEFITS

Subdivision (d) of §77605 states that no provision of the Article establishing the Task Force is intended to reduce judicial or court employee salary or benefits. Subdivision (e) further provides that no provision shall be deemed to reduce benefits or affect the current employment status of any peace officer involved in court operations.

#### X. TASK FORCE ON COURT FACILITIES

AB 233 establishes a Task Force on Court Facilities charged with studying and making recommendations related to the funding of trial and appellate court facility maintenance, improvements, and expansion. Government Code §77651 provides for 18 members, including at least four members representing the trial courts. As with the Task Force on Court Employees, AB 233 provides that members of the Task Force on Court Facilities will be appointed by October 1, 1997, but it is anticipated that appointments will be made near January 1, 1998, when AB 233 becomes effective.

#### A. TASK FORCE DUTIES

The Task Force's duties are listed in Government Code §77653. They are:

- 1) Document the state of existing court facilities;
- 2) Document the need for new or modified court facilities and the extent to which current court facilities are fully utilized;
- 3) Document the funding mechanisms currently available for maintenance, operation, construction, and renovation of court facilities;
- 4) Examine existing standards for court facility construction;
- 5) Document the impacts of state actions on court facilities and other state and local justice system facilities;

- 6) Review and recommend operational changes which may mitigate the need for additional court facilities, including the implementation of methods to more fully utilize existing facilities;
- 7) Review and provide recommendations on concepts regarding security, operational flexibility, alternative dispute resolution, meeting space, special needs of children, families, victims, and disabled persons, technology, the dignity of the participants, and any other special needs of court facilities;
- 8) Recommend specific funding responsibilities among the various entities of government for support of trial court facilities and facility maintenance including, but not limited to, full state responsibility or continued county responsibility; and,
- 9) Recommend funding sources and financing mechanisms for support of court facilities and facility maintenance.

#### B. TIMETABLE

The Task Force is required to review all available court facility standards and make preliminary determinations of acceptable standards for construction, renovation, and remodeling of court facilities by July 1, 1998. The Task Force must submit three interim reports to the Judicial Council, the Legislature and the Governor. It must also circulate these reports for comment to the counties and the judiciary, and may circulate them for comment to users of court facilities.

The first interim report is due July 1, 1999 and is to include the findings of a survey of all trial and appellate court facilities in the state. A second interim report is due July 1, 2000, and must document the following:

- The impact of adding judgeships upon court facility and other justice system facility needs;
- The effects of trial court coordination and consolidation upon court and justice system facilities needs; and,
- Administrative and operational changes which can reduce or mitigate the need for added court or justice system facilities.

A third interim report is due January 1, 2001 and must include:

- Recommendations for specific funding responsibilities among the entities of government, including full state responsibility, full county responsibility, or shared responsibility;



- A proposed transition plan if responsibility is to be changed; and,
- Recommendations regarding funding sources for court facilities and funding mechanisms to support court facilities.

The Task Force's final report to the Judicial Council, the Legislature, and the Governor is due July 1, 2001, and is to include all elements of the interim reports, incorporating any changes recommended by the Task Force in response to comments received.

### C. TASK FORCE MEMBERSHIP

Task Force members include:

- Six members appointed by the Chief Justice from urban, suburban, and rural courts. Subdivision (b) requires that one representative be a justice of the court of appeal and that four representatives may be either trial court judges or trial court administrators. The sixth member is not specified.
- Six members appointed by the Governor from a list of nominees submitted by the California State Association of Counties, who represent urban, suburban, and rural counties. Subdivision (c) requires one representative with court security responsibility. Four representatives may be either county supervisors or county administrators. The sixth member is not specified.
- Two members appointed by the Senate Rules Committee, one of whom must represent the State Bar or an associated attorney organization, neither of whom would be eligible for appointment by the Chief Justice or the Governor.
- Two members appointed by the Speaker of the Assembly, one of whom must represent the State Bar or an associated attorney organization, neither of whom would be eligible for appointment by the Chief Justice or the Governor.
- The Director of General Services and the Director of Finance.

The Chief Justice is responsible for designating a Task Force chairperson from among these members.

### D. TASK FORCE STAFF

The Judicial Council is designated by Government Code §77652 to provide staff support for the Task Force. Upon request of the Judicial Council, the Department of Personnel Administration, the Department of Finance, and the Legislative Analyst may

also be called upon for staff support. Section 77652 also states that the California State Association of Counties is encouraged to provide additional staff support.

#### E. INADMISSIBILITY OF TASK FORCE FINDINGS IN ACTION AGAINST COUNTY

Government Code §77655 provides that the findings of the Task Force may not be considered or entered into evidence in any action brought by a trial court to compel a county to provide necessary and suitable facilities.

### XI. OTHER PROVISIONS

#### A. COMPENSATION OF JUDGES SITTING ON ASSIGNMENT

AB 233 amends Government Code §68547 pertaining to judges sitting on assignment. Currently, judges who worked any portion of a day on assignment were compensated at the daily rate of the court to which the judge was assigned. Section 68547 is amended to require the judge to work "in a substantial way" on the court to which the judge is assigned.

The bill also amends §68547 to authorize superior court pay for municipal court judges who sit in courts that participate in an approved coordination plan pursuant to which judges are assigned cases as specified. New subdivision (b) provides that a municipal court judge is deemed to have served on assignment in the superior court on any day when both of the following applies:

- 1) A cross-assignment issued by the Chief Justice is in effect and the judge's workload is assigned pursuant to a judicial and administrative coordination plan approved by the Judicial Council pursuant to procedures set forth in rules of court and consistent with Section 68112; and,
- 2) The Judicial Council has certified that cases in the court's jurisdiction are assigned pursuant to a uniform countywide or regional system for assignment of cases among superior and municipal courts which maximizes the utilization of all judicial officers in that county or region.

The Judicial Council is required to adopt rules as necessary to implement §68547. Section 68547, as amended, is repealed by subdivision (e) on January 1, 1999 when the former version of §68547 becomes operative once again.

#### B. INDEMNIFICATION AND LEGAL REPRESENTATION

New Government Code §77204 would authorize the Judicial Council to allocate funds appropriated annually to the State Trial Court Trust Fund for the purpose of paying legal costs resulting from lawsuits or claims arising out of the actions or conduct of a trial

court, trial court bench officer, or trial court employee, and for which the state is named as a defendant or alleged to be the responsible party.

Unlike other provisions in AB 233 authorizing special allocation to a separate fund, there is no provision for an Indemnification and Legal Representation Fund. Moreover, it is not clear whether allocations under §77204 will be funded by distribution of funds which otherwise would be allocated to trial court budgets, or by specific appropriation of funds for that purpose.

"Legal costs" under §77204 would include:

- 1) The state's portion of any agreement, settlement decree, stipulation, or stipulated judgment in an action involving a trial court bench officer or employee, or challenging a California rule of court, form, local trial court rule or policy;
- 2) The state's portion of any judgment in an action involving a trial court bench officer or employee, or challenging a California rule of court, form, local trial court rule or policy; or,
- 3) The state's portion of any attorneys' fees, legal assistant fees, and any litigation costs and expenses, including, but not limited to, experts' fees, incurred in an action involving a trial court bench officer or employee, or challenging a California rule of court, form, local trial court rule or policy.

#### C. CIVIL DELAY REDUCTION TEAM

A Civil Delay Reduction Team comprised of judges assigned by the authority of the Chief Justice is established by section 62 of AB 233. Two million dollars of the appropriation for assigned judges will be applied toward funding the Delay Reduction Team for the current fiscal year pursuant to section 63 of the bill.

The primary responsibility of the Team is to assist courts in reducing or eliminating delay in civil case adjudication. The Chief Justice will assign judges after taking into account:

- The number of delayed civil cases in each county and court;
- The delay in processing civil cases;
- The age of inventory of cases, with greater weight to be given to cases with a long delay without resolution;
- The average length of time needed to dispose of civil cases;
- The adverse impact on civil litigants; and,
- The likelihood that utilization of the team will encourage effective and efficient use of existing local court resources.

Subdivision (d) provides that Delay Reduction Team assignments are to supplement civil court resources, not to supplant a judge currently assigned to a civil court calendar.

The Judicial Council is required to report to the Legislature annually on the assignment of Delay Reduction Team judges and their impact on civil delay reduction. Section 62 becomes inoperative on July 1, 1999.

#### D. JUDICIAL TRAINING

New Government Code §68088 authorizes the Judicial Council to provide by rule of court for training judicial officers regarding sexual harassment and racial, ethnic, and gender bias.

#### E. EXPENDITURE REPORTING

Government Code §68113 requires the trial courts to submit quarterly reports to the Judicial Council on progress toward achieving cost reduction goals associated with coordination plans. The reports must include information prepared by the county auditor on expenditures for court operations and on court revenues. As amended by AB 233, this information is still required but no longer must be prepared by the county auditor.

#### F. ELECTRONIC DATA COLLECTION

Government Code §68513 requires the Judicial Council to provide for uniform collection, storage and retrieval of civil case data in superior courts. This section is amended to require that, beginning in 1998, the Judicial Council must report annually to the Legislature on or before January 1 on such systems. The section is also amended to require the Legislature to evaluate and adjust the level of funds available for automating such systems pursuant to §68090.8, for noncompliance with recordkeeping requirements.

New Penal Code §1170.45 requires the Judicial Council to collect data on criminal cases statewide relating to the disposition of such cases according to the race and ethnicity of the defendant. The Judicial Council is required to report on this data annually to the Legislature beginning no later than January 1, 1999. Section 1170.45 states that it is the intent of the Legislature to appropriate funds to the Judicial Council for purposes of the section.

#### G. SPECIAL ALLOCATION FOR FACILITIES REPAIR AND MAINTENANCE

New Government Code §68085.5 authorizes the Judicial Council to allocate up to \$5 million in unexpended funds in the Trial Court Trust Fund or other available funds for the 1997-98 fiscal year to the counties for trial court facilities renovation, repair and

maintenance projects approved by the Council. The Judicial Council is authorized to make the allocation upon appropriation by the Legislature and subject to the conditions specified in subdivision (d) of §68085.5 as follows:

- 1) The county has an environmental impact review report certified, if one is required for the project;
- 2) The county board of supervisors has completed and approved the plans and specifications for the project;
- 3) The county has completed the architectural design through a request for proposal process for the project;
- 4) The county has completed any update of the justice facility master plan that is necessary;
- 5) The county has already completed a competitive bid process for the project;
- 6) The county has completed any and all land acquisition, including all necessary condemnation and relocation proceedings, for the project; and,
- 7) The county has received Board of Corrections approval for any holding facilities.

Section 68085.5 provides for reimbursement by a county which receives an allocation under this section. If the county is entitled to a share of excess revenue above its fixed contribution (pursuant to Government Code §77205), that share is instead deposited into the Trust Fund up to the amount of the allocation.

The provisions of §68085.5 become inoperative on July 1, 2001, except that the reimbursement provision will remain operative until all allocated funds have been reimbursed by the counties.

#### H. JUDICIAL COUNCIL REPORTS ON FISCAL IMPACT OF PENDING LEGISLATION

The Judicial Council is required by section 61 of AB-233 to forward information to the Legislature regarding the fiscal impact of pending legislation affecting the courts. The purpose of this information is to assist the Legislature in its consideration of such legislation.

#### I. TRIAL COURT "900" NUMBERS

Government Code §77209, which authorizes a court to establish a "900" telephone number or numbers for traffic, misdemeanor, and other telephonic arraignment, for court scheduling, and for rendering tentative civil decisions, is renumbered to §77211.

CALIFORNIA RULES OF COURT

DIVISION VI. Miscellaneous Rules Relating to Trial Courts

*Rule 810. Court Operations*

(a) [Definition] Except as provided in subdivision (b) and subject to the requirements of subdivisions (c) and (d), "court operations" as defined in Government Code section 77003 includes the following costs:

- 1) (judicial salaries and benefits) salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers;
- 2) (nonjudicial salaries and benefits) salaries, benefits, and public agency retirement contributions for superior and municipal court staff whether permanent, temporary, full- or part-time, contract or per diem, including but not limited to all municipal court staff positions specifically prescribed by statute and county clerk positions directly supporting the superior courts.
- 3) salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function;
- 4) court-appointed counsel in juvenile dependency proceedings, and counsel appointed by the court to represent a minor as specified in Government Code section 77003;
- 5) (services and supplies) operating expenses in support of judicial officers and court operations;
- 6) (collective bargaining) collective bargaining with respect to court employees; and
- 7) (indirect costs) a share of county general services as defined in subdivision (d), Function 11, and used by the superior and municipal courts.

(b) [Exclusions] Excluded from the definition of "court operations" are the following:

- 1) law library operations conducted by a trust pursuant to statute;

- 1) courthouse construction and site acquisition, including space rental (for other than court records storage); alterations/remodeling, or relocating court facilities;
- 2) district attorney services;
- 3) probation services;
- 4) indigent criminal and juvenile delinquency defense;
- 5) civil and criminal grand jury expenses and operations except for selection;
- 6) pretrial release services;
- 7) equipment and supplies for use by official reporters of the courts to prepare transcripts as specified by statute; and
- 8) county costs as provided in subdivision (d) as unallowable.

**(c) [Budget appropriations]** Costs for court operations specified in subdivision (a) shall be appropriated in county budgets for superior and municipal courts, including contract services with county agencies or private providers except for the following: (1) salaries, benefits, services, and supplies for sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts; (2) salaries, benefits, services, and supplies for county clerk activities directly supporting the superior court; and (3) costs for court-appointed counsel specified in Government Code section 77003. Except as provided in this subdivision, costs not appropriated in the budgets of the courts are unallowable.

**(d) [Functional budget categories]** Trial court budgets and financial reports shall identify all allowable court operations in the following eleven (11) functional budget categories. Costs for salary, wages, and benefits of court employees are to be shown in the appropriate functions provided the individual staff member works at least 25 percent time in that function. Individual staff members whose time spent in a function is less than 25 percent are reported in Function 10, All Other Court Operations. The functions and their respective costs are as follows:

## Function 1. Judicial Officers

Costs reported in this function are:

Salaries and state benefits of  
Judges  
Full- or part-time court commissioners  
Full- or part-time court referees  
Assigned judges' in-county travel expenses

Costs not reported in this function include

County benefits of judicial officers (Function 10)  
Juvenile traffic hearing officers (Function 10)  
Mental health hearing officers (Function 10)  
Pro tem hearing officers (Function 10)  
Commissioner and referee positions specifically excluded by statute from state trial court funding (unallowable)  
Related data processing (Function 9)  
Any other related services, supplies, and equipment (Function 10)

## Function 2. Jury Services

Costs reported in this function are:

Juror expenses of per diem fees and mileage  
Meals and lodging for sequestered jurors  
Salaries, wages, and benefits of jury commissioner and jury services staff (including selection of grand jury)  
Contractual jury services  
Jury-related office expenses (other than information technology)  
Jury-related communications, including "on call" services

Costs not reported in this function include:

Juror parking (unallowable)  
Civil and criminal grand jury costs (unallowable)  
Jury-related information systems (Function 9)

## Function 3. Verbatim Reporting

Costs reported in this function are:

Salaries, wages, and benefits of court reporters who are court employees



Salaries, wages, and benefits of electronic monitors and support staff  
Salaries, wages, and benefits of verbatim reporting coordinators and clerical support staff  
Contractual court reporters and monitors  
Transcripts for use by appellate or trial courts, or as otherwise required by law  
Related office expenses and equipment (purchased, leased, or rented) used to record court proceedings, except as specified in Government Code section 68073, e.g.,  
notepaper, pens, and pencils  
ER equipment and supplies

Costs not reported in this function include:

Office expenses and equipment for use by reporters to prepare transcripts (unallowable)  
Expenses specified in Government Code section 69073 (unallowable)  
Space use charges for court reporters (unallowable)

#### Function 4. Court Interpreters

Costs reported in this function are:

Salaries, wages, and benefits of courtroom interpreters and interpreter coordinators  
Per diem and contractual courtroom interpreters, including contractual transportation and travel allowances

Costs not reported in this function include:

Related data processing (Function 9)  
Any other related services, supplies, and equipment (Function 10)

#### Function 5. Collections Enhancement

Collections performed in the enforcement of court orders for fees, fines, forfeitures, restitutions, penalties, and assessments (beginning with the establishment of the accounts receivable record)

Costs reported in this function are:

Salaries, wages, and benefits of collection employees of the court, e.g.,  
financial hearing officers  
evaluation officers  
collection staff  
Contract collections costs

County charges for collection services provided to the court by county agencies  
Related services, supplies, and equipment (except data processing, Function 9)

Costs not reported in this function include:

Staff whose principal involvement is in collecting "forthwith" payments, e.g.,  
counter clerks (Function 10)  
cashiers (Function 10)

## Function 6. Dispute Resolution Programs

Costs reported in this function are:

Arbitrators' fees in mandatory judicial arbitration programs  
Salaries, wages, and benefits of court staff providing child custody and visitation  
mediation and related investigation services, e.g.,

Director of Family Court Services  
mediators  
conciliators  
investigators  
clerical support staff

Contract mediators providing child custody and visitation mediation services  
Salaries, wages, benefits, fees, and contract costs for other arbitration and mediation  
programs (programs not mandated by statute), e.g.,

arbitration administrators  
clerical support staff  
arbitrators' fees and expenses

Costs not reported in this function include:

Related data processing (Function 9)  
Any other related services, supplies, and equipment (Function 10)

## Function 7. Court-Appointed Counsel (Non-criminal)

Costs reported in this function are:

Expenses for court-appointed counsel as specified in Government Code section 77003

## Function 8. Court Security

Court security services as deemed necessary by the court.

Includes only the duties of  
(a) courtroom bailiff,

- (b) perimeter security (i.e., outside the courtroom but inside the court facility), and
- (c) at least .25 FTE dedicated supervisors of these activities.

Costs reported in this function are:

Salary, wages, and benefits (including overtime) of sheriff, marshal, and constable employees who perform the court's security, i.e.,

- bailliffs

- weapons screening personnel

Salary, wages, and benefits (including overtime) of court staff performing court security, e.g.,

- court attendants

Contractual security services

Salary, wages, and benefits of supervisors of sheriff, marshal, and constable employees whose duties are greater than .25 FTE dedicated to this function

Sheriff, marshal, and constable employee training

Purchase of security equipment

Maintenance of security equipment

Costs not reported in this function include:

Other sheriff, marshal, or constable employees (unallowable)

Court attendant training (Function 10)

Overhead costs attributable to the operation of the sheriff and marshal offices (unallowable)

Costs associated with the transportation and housing of detainees from the jail to the courthouse (unallowable)

Service of process in civil cases (unallowable)

Services and supplies, including data processing, not specified above as allowable

Supervisors of bailiffs and perimeter security personnel of the sheriff, marshal, or constable office who supervise these duties less than .25 FTE time (unallowable)

## Function 9. Information Technology

Costs reported in this function are:

Salaries, wages, and benefits of court employees who plan, implement, and maintain court data processing and information technologies, e.g.,

- programmers

- analysts

Contract and consulting services associated with court information/data processing needs and systems

County Information Systems/Data Processing Department charges made to court for court systems, e.g.,

jury-related systems

court and case management, including courts' share of a criminal justice information system

accounts receivable/collections systems

Related services, supplies, and equipment, e.g.,

Software purchases and leases

Maintenance of automation equipment

Training associated with data processing systems' development

Costs not reported in this function include:

Information technology services not provided directly to the courts (i.e., services used by other budget units)

Data processing for county general services, e.g., payroll, accounts payable (Function 11)

#### Function 10. All Other Court Operations

Costs reported in this function are:

Salaries, wages, and benefits (including any pay differentials and overtime) of court staff

a) not reported in Functions 2-9, or

b) whose time cannot be allocated to Functions 2-9 in increments of at least 25 percent time (.25 FTE);

Judicial benefits, county-paid

Allowable costs not reported in Functions 2--9.

(Nonjudicial staff) Cost items may include, for example:

Juvenile traffic hearing officer

Mental health hearing officer

Court-appointed hearing officer (pro tem)

Executive officer

Court administrator

Clerk of the court

Administrative assistant

Personnel staff

Legal research personnel; staff attorney; planning and research staff

Secretary

Courtroom clerk

Clerical support staff

Calendar clerk

Deputy clerk

Accountant

Cashier  
Counter clerk  
Microfilming staff  
Management analyst  
Probate conservatorship and guardianship investigators  
Probate examiner  
Training staff employed by the court  
Personnel costs not reported in this function: Any of the above not employed by the court

(Services and supplies) Cost items may include, for example:

Office supplies  
Printing  
Postage  
Communications  
Publications and legal notices, by the court  
Miscellaneous departmental expenses  
Books, publications, training fees, and materials for court personnel (judicial and nonjudicial)  
Travel and transportation (judicial and nonjudicial)  
Professional dues  
Memberships and subscriptions  
Statutory multidistrict judges' association expenses  
Research, planning, and program coordination expenses  
Small claims advisor program costs  
Court-appointed expert witness fees (for the court's needs)  
Court-ordered forensic evaluations and other professional services (for the court's own use)  
Pro tem judges' expenses  
Micrographics expenses  
Public information services  
Vehicle use, including automobile insurance  
Equipment (leased, rented, or purchased) and furnishings, including interior painting, replacement/maintenance of flooring, and furniture repair  
Maintenance of office equipment  
Janitorial services  
Legal services for allowable court operations (County Counsel and contractual)  
Fidelity and faithful performance insurance (bonding and personal-liability insurance on judges and court employees)  
Insurance on cash money and securities (hold-up and burglary)  
General liability/comprehensive insurance for other than faulty maintenance or design of facility (e.g., "slip and fall", other injury, theft and damage of court equipment, slander, discrimination)  
Risk management services related to allowable insurance  
Space rental for court records

County records retention/destruction services  
County messenger/mail service  
Court audits mandated under Government Code 71383  
Service and supply costs not reported in this function include:  
Civic association dues (unallowable)  
Facility damages insurance (unallowable)  
County central service department charges not appropriated in the court budget  
(unallowable)

### Function (11). County General Services ("Indirect Costs")

General county services are defined as all eligible accounting, payroll, budgeting, personnel, purchasing, and county administrator costs rendered in support of court operations. Costs for included services are allowable to the extent the service is provided to the court. The following costs, regardless of how characterized by the county or by which county department they are performed, are reported in this function only and are subject to the statutory maximum for indirect costs as specified in Government Code section 77003. To the extent costs are allowable under this rule, a county's approved Cost Plan may be used to determine the specific cost although the cost categories, or functions, may differ.

Cost items within the meaning of Rule 810 (a)(7) and the county departments often performing the service may include, for example:

#### County Administrator

- Budget development and administration
- Interdepartmental budget unit administration and operations
- Personnel (labor) relations and administration

#### Auditor-Controller

- Payroll
- Financial audits
- Warrant processing
- Fixed asset accounting
- Departmental accounting for courts, e.g., fines, fees, forfeitures, restitutions, penalties, and assessments; accounting for the Trial Court Special Revenue Fund
- Accounts payable
- Grant accounting
- Management reporting
- Banking

#### Personnel

- Recruitment and examination of applicants
- Maintenance and certification of eligible lists
- Position classification
- Salary surveys

- Leave accounting
- Employment physicals
- Handling of appeals
- Treasurer/Tax Collector
  - Warrant processing
  - Bank reconciliation
  - Retirement system administration
  - Receiving, safeguarding, investing, and disbursing court funds
- Purchasing Agent
  - Process departmental requisitions
  - Issue and analyze bids
  - Make contracts and agreements for the purchase or rental of personal property
  - Store surplus property and facilitate public auctions

Unallowable costs:

Unallowable court-related costs are those:

- a) in support of county operations,
- b) expressly prohibited by statute,
- c) facility-related, or
- d) exceptions of the nature referenced in Functions 1--11.

Unallowable cost items, including any related data processing costs, are not reported in Functions 1--11 and may include for example:

Communications

- Central communication control and maintenance for county emergency and general government radio equipment

Central Collections

- Processing accounts receivable for county departments (not courts)

County Administrator

- Legislative analysis and activities
- Preparation and operation of general directives and operating procedures
- Responses to questions from the Board, outside agencies, and the public

- Executive functions: Board of Supervisors

- County advisory councils

Treasurer/Tax Collector

- Property tax determination, collection, etc.

General Services

- Rental and utilities support
- Coordinate county's emergency services

Property Management

- Negotiations for the acquisition, sale, or lease of property except for space rented for storage of court records

Making appraisals  
Negotiating utility relocations  
Assisting County Counsel in condemnation actions  
Preparing deeds, leases, licenses, easements  
Collecting rents  
Building lease management services (except for storage of court records)

Facility-related

Construction services  
Right-of way and easement services  
Purchase of land and buildings  
Construction  
Depreciation of buildings/use allowance  
Space rental/building rent (except for storage of court records)  
Building maintenance and repairs (except interior painting and to replace/repair flooring)  
Purchase, installation, and maintenance of HV/A/C equipment  
Maintenance and repair of utilities  
Utility use charges (e.g., heat, light, water)  
Elevator purchase and maintenance  
Alterations/remodeling  
Landscaping and grounds' maintenance services  
Exterior lighting and security  
Insurance on building damages (e.g., fire, earthquake, flood, boiler and machinery)  
Grounds' liability insurance  
Parking lot or facility maintenance  
Juror parking





**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

December 19, 2003

**RECEIVED**

DEC 22 2003

**COMMISSION ON  
STATE MANDATES**

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

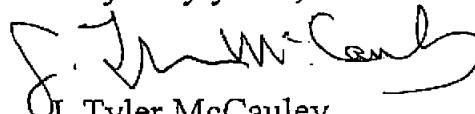
Dear Ms. Higashi:

**County of Los Angeles Test Claim [CSM-98-TC-14] Amendment  
Domestic Violence Arrests and Victim Assistance**

We submit and enclose herein an amendment to the subject test claim.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions concerning this submission.

Very truly yours,

  
J. Tyler McCauley  
Auditor-Controller

JTM:JN:LK  
Enclosures

State of California  
COMMISSION ON STATE MANDATES  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916)323-3562  
CSM 1 (12/89)

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DEC 22 2003
COMMISSION ON STATE MANDATES
Claim No.

**TEST CLAIM FORM**

**Local Agency or School District Submitting Claim**

Los Angeles County

**Contact Person**

**Telephone No.**

Leonard Kaye

(213) 974-8564

**Address**

500 West Temple Street, Room 603  
Los Angeles, CA 90012

**Representative Organization to be Notified**

California State Association of Counties

This test claim alleges the existence of "costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article, XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code. Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page a

**IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.**

**Name and Title of Authorized Representative**

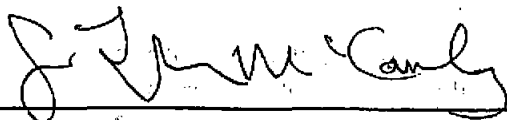
**Telephone No.**

J. Tyler McCauley  
Auditor-Controller

(213) 974-8301

**Signature of Authorized Representative**

**Date**



12/19/03

**County of Los Angeles Test Claim Amendment [1]  
Penal Code Sections 264.2, 13701, 13519: Statutes of 1998, Chapter 698;  
Statutes of 1998, Chapter 701; Statutes of 1998, Chapter 702 [CSM-98-TC-14]  
Domestic Violence Arrests and Victim Assistance**

---

[1] The County of Los Angeles requests that its "Domestic Violence Arrests and Victim Assistance" test claim, filed on May 21, 1999 with the Commission on State Mandates, be amended to include sections 3.3 and 6 of [Statutes of 1998] Chapter 702 [Assembly Bill 2177] which gave effect to, and incorporated in the form set forth in section 3.3 of [Statutes of 1998] Chapter 702, identical amendments to Penal Code Section 13701 in Section 2. of [Statutes of 1998] Chapter 698 [Assembly Bill 1201] and in Section 2. of [Statutes of 1998] Chapter 701 [Assembly Bill 2172], the test claim legislation.

**County of Los Angeles Test Claim Amendment [CSM-98-TC-14]  
Penal Code Sections 264.2, 13701, 13519: Statutes of 1998, Chapter  
698; Statutes of 1998, Chapter 701; Statutes of 1998, Chapter 702  
Domestic Violence Arrests and Victim Assistance**

The County of Los Angeles requests that its "Domestic Violence Arrests and Victim Assistance" test claim, filed on May 21, 1999 with the Commission on State Mandates, be amended to include sections 3.3 and 6 of [Statutes of 1998] Chapter 702 [Assembly Bill 2177] which gave effect to, and incorporated in the form set forth in section 3.3 of [Statutes of 1998] Chapter 702, identical amendments to Penal Code Section 13701 in Section 2. of [Statutes of 1998] Chapter 698 [Assembly Bill 1201] and in Section 2. of [Statutes of 1998] Chapter 701 [Assembly Bill 2172], the test claim legislation.

Chapter 702, Statutes of 1998 [attached as Exhibit 1], enacted on September 22, 1998, amends Section 13701 of the Penal Code as follows:

" SEC. 3.3. Section 13701 of the Penal Code is amended to read:

<< CA PENAL § 13701 >>

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, <<+ or any other state, tribe, or territory,+>> has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to

identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, <<+or a hospital for treatment when necessary,+>> and police standbys for removing personal property <<+and assistance in safe passage out of the victim's residence+>>.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."

(C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."

<<+(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."+>>

<<+(E)+>> A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

<<+(F)+>> A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

<<+(G)+>> A statement informing the victim of 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.

<<+(H)+>> In the case of an alleged violation of <<+subdivision (e) of Section 243 or+>> Section 261, 261.5, 262, <<+273.5,+>> 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and <<-\* \* \*->><<+phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and+>> rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

<<+(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.+>>

(10) Writing of reports.

(d) In the development of these policies and standards, 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."

Section 6 of Chapter 702, Statutes of 1998 sets forth the requirements for enacting the [above] amendment to Penal Code Section 13701, as follows:

" SEC. 6. (a) Section 3.1 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and AB 1201. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 2172 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1201, in which case Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and AB 2172. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 1201 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2172, in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2172. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201, and AB 2172, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative. [Emphasis added.]



It should be noted that Section 3.3 became operative as:

- (1) all three bills were enacted on September 22, 1998, and became effective on or before January 1, 1999,
- (2) all three bills amended Section 13701 of the Penal Code, and
- (3) this bill [AB 2177 or Chapter 702] was enacted after AB 1201 [Chapter 698], and AB 2172 [Chapter 701].

Under the [above Section 6] provision of [Statutes of 1998] Chapter 702, passage of all three statutes [Chapter 698, Chapter 701, Chapter 702] was required to give effect to the amendment to Penal Code Section 13701 [as set forth in Section 3.3 of Chapter 702]. This amendment, then, was 'triple joined', requiring passage of all three statutes containing identical amendments to Penal Code Section 13701 in Section 2. of [Statutes of 1998] Chapter 698 [Assembly Bill 1201] and in Section 2. of [Statutes of 1998] Chapter 701 [Assembly Bill 2172], the test claim legislation.

It should be noted that all three statutes [Chapter 698, Chapter 701, Chapter 702] were enacted on the same day – September 22, 1998. All three statutes contained the same amendment to Penal Code Section 13701. However, as this amendment was 'triple joined', it became law only after the third and last Chapter [Chapter 702] was enacted.

Therefore, it is requested that sections 3.3 and 6 of [Statutes of 1998] Chapter 702, amending Penal Code Section 13701, be amended to the subject test claim.

#### Amendment Provision

As noted by Commission's Executive Director, "[p]ursuant to Government Code section 17557, subdivision (c), the claimant may amend the test claim at any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the original test claim"<sup>1</sup>.

---

<sup>1</sup> From page 1 of the October 5, 2000 letter of Paula Higashi, Commission's Executive Director to Leonard Kaye, County of Los Angeles, regarding "Claimant's Amendment to Test Claim...", attached as Exhibit 2.

In this case the duties claimed herein are substantially related to the original test claim legislation. Indeed, the amended duties are identical to those originally claimed as the original [test claim] versions of Penal Code Section 13701 in Chapters 698 and 701, are identical to version of Section 13701 in Chapter 702, for which this amendment is requested.

Accordingly, this amendment request should be granted.

Section 13701 Duties

Penal Code Section 13701 as set forth in Section 3.3 of Chapter 702 and Section 2, Chapter 698 and Section 2. of Chapter 701 imposes new duties on local government which were not required under prior law.

Specifically, in pertinent part, Sections 13701, as amended herein, now requires local law enforcement agencies to perform new duties as indicated below in **bold print**. Subparagraph (G) of paragraph (9) of Section 13701 of the Penal Code requires that victims be now provided with:

**“(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229.**

-----

**(H)(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.**

-----

**(H)(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.”**

Regarding domestic violence arrests, Penal Code section 13701(c)(7), as amended herein, mandates new victim assistance, as stated in **bold print** below:

“Emergency assistance to victims and **children**, such as medical care, transportation to a shelter or a **hospital for treatment when necessary**, and police standbys for removing personal property and **assisting in safe passage out of the victim's residence.**”

Therefore, Penal Code Section 13701, as amended herein, requires the County to provide important new domestic violence victim services.

State Funding Disclaimers are Not Applicable

There are seven disclaimers specified in Government Code (GC) Section 17556 which could serve to bar recovery of “costs mandated by the State”, as defined in GC Section 17514. These seven disclaimers do not apply to the instant test claim amendment, as shown, in seriatim, for pertinent sections of GC Section 17556.

- (a) “The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph.”
- (a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.
- (b) “The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.”

- (b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.
- (c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."
- (c) is not applicable as no federal law or regulation is implemented in the subject law.
- (d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."
- (d) is not applicable as there is no authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
- (e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate."
- (e) is not applicable as no offsetting savings are provided in the subject law.
- (f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."
- (f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.
- (g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime

or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

- (g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs mandated by the state as claimed herein for new services for victims of domestic violence.

The Costs of Implementing New, Amended Duties are Also Reimbursable

The County has unavoidably incurred costs in performing new domestic violence incident duties, as detailed above and amended herein, which are reimbursable "costs mandated by the State" as there is no bar or disclaimer to such a finding, as previously discussed, and because such costs satisfy three requirements, found in Government Code Section 17514:

1. There are "increased costs which a local agency is required to incur after July 1, 1980"; and
2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975"; and
3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of above requirements for finding "costs mandated by the State" are met herein.

First, local government began incurring costs for the subject program as a result sections 3.3 and 6 of Statutes of 1998, Chapter 702 which gave effect to, and incorporated in the form set forth in section 3.3 of Statutes of 1998, Chapter 702, identical amendments to Penal Code Section 13701 in Section 2. of Statutes of 1998, Chapter 698 and in Section 2. of Statutes of 1998, Chapter 701 --- all statutes enacted on or after January 1, 1975.

Second, as noted in the declaration of Ms. Martha Y. Zavala, attached to the County's test claim, which was filed with the Commission on May 21, 1999 [as Exhibit 2], County costs incurred in implementing the [above] new duties began in 1999 --- well after July 1, 1980. So the second requirement, that the increased costs claimed herein be incurred after July 1, 1980, is met.

The third requirement, that the costs claimed herein are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution", is also met. As previously discussed, the test claim legislation, as amended herein, mandated that the County provide important new domestic violence victim services, not required under prior law.

Also, the amount of increased costs in implementing the test claim legislation well exceeds the current statutory minimum of \$1,000 a year. In this regard, Ms. Zavala detailed such costs in Schedule A of her declaration in Exhibit 2 of the County's May 21, 1999 test claim, also included herein on the following page.

In sum, the duties claimed herein are substantially related to the original test claim legislation. Indeed, the amended duties are identical to those originally claimed as the original [test claim] versions of Penal Code Section 13701 in Chapters 698 and 701 are identical to version of Section 13701 in Chapter 702, for which this amendment is requested.

Accordingly, reimbursement of Section 13701 victim assistance services is required as claimed herein.

## SCHEDULE A

Estimated Costs: January 1, 1999 - June 30, 1999

### A. One-Time Costs

- |                                                                |         |
|----------------------------------------------------------------|---------|
| (1) Updating policies and procedures<br>[40 hours @ \$56/hour] | \$2,240 |
| (2) Modifying record-keeping systems<br>[20 hours @ \$50/hour] | \$1,000 |

### B. Continuing Costs

- |                                                                               |         |
|-------------------------------------------------------------------------------|---------|
| (1) Printing new domestic violence/rape cards<br>[20,000 cards @ \$ .40/card] | \$8,000 |
| (2) Victim Information [Note 1]                                               |         |
| (a) Victim compensation                                                       | \$1,632 |
| (b) Battered women shelters                                                   | \$6,528 |
| (c) Counseling center, other telephone numbers                                | \$1,632 |
| (d) Domestic Violence-by-spouse statement                                     | \$1,632 |
| (3) Emergency Assistance [Note 2]                                             |         |
| (a) Children                                                                  | \$765   |
| (b) Victims                                                                   | \$383   |
| (4) Training [Note 3]                                                         |         |
| (a) New victim information                                                    | \$2,550 |
| (b) New emergency assistance                                                  | \$5,100 |
| (c) Signs of domestic violence                                                | \$7,650 |

Note (1) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 960 specified calls for the period January 1, 1999 through June 30, 1999.

Note (2) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 90 specified calls for the period January 1, 1999 through June 30, 1999.

Note (3) Based on: an average or standard time detailed in the declaration of Bernice K. Abram [included in test claim], a \$51 @ hour labor cost, and an estimated 600 officers receiving training in the period January 1, 1999 through June 30, 1999.



**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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500 WEST TEMPLE STREET, ROOM 525  
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PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY  
AUDITOR-CONTROLLER

**County of Los Angeles Test Claim Amendment [CSM-98-TC-14]  
Penal Code Sections 264.2, 13701, 13519: Statutes of 1998, Chapter  
698; Statutes of 1998, Chapter 701; Statutes of 1998, Chapter 702  
Domestic Violence Arrests and Victim Assistance**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims and amendments thereto, reviews of State agency comments, Commission staff analyses, and for proposing, or commenting on, parameters and guidelines (Ps&Gs) and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim amendment, attached hereto.

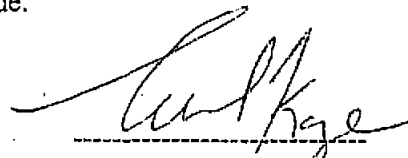
Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the attached document, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

12/14/03; Los Angeles, CA  
Date and Place

  
Signature



CALIFORNIA 1998 LEGISLATIVE SERVICE  
1998 Portion of 1997-98 Regular Session

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Additions are indicated by <<+ Text +>>; deletions by  
<<- \* \* \* ->>. Changes in tables are made but not highlighted.

CHAPTER 702  
A.B. No. 2177  
FAMILY LAW--DOMESTIC ABUSE--PROTECTIVE ORDERS

AN ACT to amend Sections 6380 and 6380.5 of the Family Code, and to amend  
Sections 13701 and 13711 of the Penal Code, relating to protective orders.

[Approved by Governor September 21, 1998.]

[Filed with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2177, Kuehl. Domestic violence: protective orders.

Under existing law, the Judicial Council is required to assist local courts that are responsible for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order.

This bill would require the informational packet to contain a statement that the protective order is enforceable in any state, territory, or reservation, and provide general information about agencies to contact regarding enforcement in those jurisdictions of an order issued by a court of this state. This bill would also require the Judicial Council to adopt rules of court that set forth the process whereby a person in possession of a valid foreign protective order may voluntarily register the order with a court for entry into the Domestic Violence Protective Order Registry, and require the sealing of foreign protective orders with access only provided to specified persons under certain conditions.

Existing law requires that a valid out-of-state protective or restraining order resulting from domestic violence or family violence be given full faith and credit by the courts of this state, and, after entry into the Domestic Violence Protective Order Registry, be enforced as if issued in this state.

This bill would delete the provision requiring that a valid out-of-state

protective or restraining order be entered into the Domestic Violence Protective Order Registry prior to being enforced as if issued in this state, and would instead require that the out-of-state protective or restraining order be registered with a court of this state and entered into the Domestic Violence Protective Registry upon the request of the person in possession of the foreign protective order.

Existing law requires law enforcement agencies to develop, adopt, and implement written policies that encourage the arrest of domestic violence offenders where there is probable cause that an offense has been committed, and require the arrest of the offender if there is probable cause that a protective order has been violated.

This bill would specify that protective orders issued in any other state, tribe, or territory are among the orders subject to these policies.

Existing law requires the clerk of the superior court, whenever a protective order with respect to domestic violence is applied for or issued, to distribute to the protected person a pamphlet with certain information, as specified.

This bill would require that the pamphlet contain notice that a protective order is enforceable in any state, territory, or reservation, and also include general information about agencies to contact regarding enforcement in those jurisdictions of an order issued in this state.

Because this bill would impose additional duties on law enforcement officers and county employees, it would establish a state-mandated local program.

This bill would incorporate additional changes in Section 6380 of the Family Code proposed by AB 1531, AB 2801, and SB 1682, to be operative if this bill and one or more of the other bills are enacted and become effective before January 1, 1999, and this bill is enacted last.

This bill would incorporate some additional changes in Section 13701 of the Penal Code proposed by AB 1201 and AB 2172, to be operative if this bill and one or both of the other bills are enacted and become effective on or before January 1, 1999, and this bill is enacted last.

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 that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 6380 of the Family Code is amended to read:

<< CA FAM § 6380 >>

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, <<+tribe, or territory,+>> and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

- (1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.
- (2) The names of the protected persons.
- (3) The date of issuance of the order.
- (4) The duration or expiration date of the order.
- (5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. <<+The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.+>>

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.1. Section 6380 of the Family Code is amended to read:

<< CA FAM § 6380 >>

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel<<+,+>> or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. <<+All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:+>>

<<+(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.+>>

<<+(2) With the approval of the Department of Justice, entering the order into CLETS directly.+>>

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, <<+tribe, or territory,+>> and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-

contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. <<+The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.+>>

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.2. Section 6380 of the Family Code is amended to read:

<< CA FAM S 6380 >>

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to <<+harassment or+>> domestic violence pursuant to Section <<+527.6 or+>> 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, <<+ tribe, or territory,+>> and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

- (1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.
- (2) The names of the protected persons.
- (3) The date of issuance of the order.
- (4) The duration or expiration date of the order.
- (5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.
- (6) The department or division number and the address of the court.
- (7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, <+that+>> local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. <<+The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.+>>

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.3. Section 6380 of the Family Code is amended to read:

<< CA FAM § 6380 >>

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the



integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, <<+tribe, or territory,+>> and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

<<+(8) The terms and conditions of any restrictions on the ownership or possession of firearms.+>>

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and

immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. <<+The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.+>>

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.4. Section 6380 of the Family Code is amended to read:

<< CA FAM § 6380 >>

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel<<+,+>> or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall

be transferred to the local agency actually providing the data. <<+All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:+>>

<<+(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.+>>

<<+(2) With the approval of the Department of Justice, entering the order into CLETS directly.+>>

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to <<+harassment or+>> domestic violence pursuant to Section <<+527.6 or+>> 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304; or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, <<+ tribe, or territory,+>> and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and

immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. <<+The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.+>>

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.5. Section 6380 of the Family Code is amended to read:

<< CA FAM § 6380 >>

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local

agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to <<+harassment or+>> domestic violence pursuant to Section <<+527.6 or+>> 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, <<+ tribe, or territory,+>> and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

<<+(8) The terms and conditions of any restrictions on the ownership or possession of firearms.+>>

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel,

through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, <<+that+>> local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. <<+The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.+>>

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.6. Section 6380 of the Family Code is amended to read:

<< CA FAM § 6380 >>

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel<<+,+>> or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. <<+All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:+>>

<<+(1) Transmitting a physical copy of the order to a local law enforcement agency

authorized by the Department of Justice to enter orders into CLETS.+>>

<<+(2) With the approval of the Department of Justice, entering the order into CLETS directly.+>>

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, <<+tribe, or territory,+>> and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

<<+(8) The terms and conditions of any restrictions on the ownership or possession of firearms.+>>

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. <<+The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.+>>

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 1.7. Section 6380 of the Family Code is amended to read:

<< CA FAM § 6380 >>

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data. <<+All data with respect to criminal court protective orders issued under subdivision (g) of Section 136.2 of the Penal Code shall be transmitted by the court or its designee within one business day to law enforcement personnel by either one of the following methods:+>>



<<+(1) Transmitting a physical copy of the order to a local law enforcement agency authorized by the Department of Justice to enter orders into CLETS.+>>

<<+(2) With the approval of the Department of Justice, entering the order into CLETS directly.+>>

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to <<+harassment or+>> domestic violence pursuant to Section <<+527.6 or+>> 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code, or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, <<+ tribe, or territory,+>> and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

<<+(8) The terms and conditions of any restrictions on the ownership or possession of firearms.+>>

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the

service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, and shall include a design, which local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. <<+The informational packet shall also contain a statement that the protective order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.+>>

(h) For the purposes of this part, "electronic transmission" shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2. Section 6380.5 of the Family Code is amended to read:

<< CA FAM § 6380.5 >>

6380.5. (a) An out-of-state protective or restraining order issued by a state, tribal, or territorial court related to domestic or family violence shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory. There shall be a presumption of validity where an order appears authentic on its face.

(b) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, tribe, or territory <<-\* \* \* ->><<+shall, upon request of the person in possession of the foreign protective order,+>> be registered with a court of this state in order to be entered in the Domestic Violence Protective Order Registry established under this chapter. <<+The Judicial Council shall adopt rules of court to do the following:+>>

<<+(1) Set forth the process whereby a person in possession of a valid foreign protective order may voluntarily register the order with a court of this state for entry into the Domestic Violence Protective Order Registry.+>>

<<+(2) Require the sealing of foreign protective orders and provide access only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.+>>

(c) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, tribe, or territory shall be accorded full faith and credit by the courts of this state, and <<-\* \* \*->> shall be enforced as <<+set forth in Section 6381, as+>> if it had been issued in this state.

SEC. 3. Section 13701 of the Penal Code is amended to read:

<< CA PENAL § 13701 >>

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, <<+ or any other state, tribe, or territory,+>> has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.

(4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(5) Verification and enforcement of stay-away orders.

(6) Cite and release policies.

(7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.

(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."

(C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."

(D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(F) A statement informing the victim of 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.

(G) In the case of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 3.1. Section 13701 of the Penal Code is amended to read:

<< CA PENAL § 13701 >>

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, <<+ or any other state, tribe, or territory,+>> has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence

between the persons involved, and whether either person acted in self-defense). These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
  - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
  - (B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."
  - (C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."
  - <<+(D)+>> A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229." +>>
  - <<+(E)+>> A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.
  - <<+(F)+>> A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
    - (i) An order restraining the attacker from abusing the victim and other family members.

- (ii) An order directing the attacker to leave the household.
- (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
- (iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.
- (v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
- (vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
- (vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.
- (viii) An order directing that either or both parties participate in counseling.

<<+(G)+>> A statement informing the victim of 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.

<<+(H)+>> In the case of an alleged violation of <<+subdivision (e) of Section 243 or+>> Section 261, 261.5, 262, <<+273.5,+>> 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and <<-\* \* \*->><<+phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and+>> rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

<<+(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.+>>

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 3.2. Section 13701 of the Penal Code is amended to read:

<< CA PENAL § 13701 >>

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, <<+ or any other state, tribe, or territory,+>> has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims <<+and children+>>, such as medical care, transportation to a shelter <<+or a hospital for treatment when necessary+>>, and police standbys for removing personal property <<+and assisting in safe passage out of the victim's residence+>>.



(8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

(9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:

(A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.

(B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."

(C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."

(D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(F) A statement informing the victim of 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.

(G) In the case of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 3.3. Section 13701 of the Penal Code is amended to read:

<< CA PENAL § 13701 >>

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses 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.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, <<+ or any other state, tribe, or territory,+>> has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) 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:

(1) Felony arrests.

- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, <<+or a hospital for treatment when necessary,+>> and police standbys for removing personal property <<+and assistance in safe passage out of the victim's residence+>>.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
  - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
  - (B) A statement that, "For further information about a shelter you may contact \_\_\_\_\_."
  - (C) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_\_."
  - <<+(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229." +>>
  - <<+(E) +>> A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.
  - <<+(F) +>> A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
    - (i) An order restraining the attacker from abusing the victim and other family members.
    - (ii) An order directing the attacker to leave the household.
    - (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
    - (iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

- (v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.
- (vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.
- (vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.
- (viii) An order directing that either or both parties participate in counseling.

<<+(G)+>> A statement informing the victim of 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.

<<+(H)+>> In the case of an alleged violation of <<+subdivision (e) of Section 243 or+>> Section 261, 261.5, 262, <<+273.5,+>> 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

- (i) The names and <<-\* \* ->><<+phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and+>> rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.
- (ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.
- (iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.
- <<+(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.+>>

(10) Writing of reports.

(d) In the development of these policies and standards, 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.

SEC. 4. Section 13711 of the Penal Code is amended to read:

<< CA PENAL § 13711 >>

13711. Whenever a protection order with respect to domestic violence incidents, including orders issued pursuant to Section 136.2 and restraining orders, is applied for or issued, it shall be the responsibility of the clerk of the superior

court to distribute a pamphlet to the person who is to be protected by the order that includes the following:

(a) Information as specified in subdivision (i) of Section 13701.

(b) Notice that it is the responsibility of the victim to request notification of an inmate's release.

(c) Notice that the terms and conditions of the protection order remain enforceable, notwithstanding any acts of the parties, and may be changed only by order of the court.

<<+(d) Notice that the protection order is enforceable in any state, territory, or reservation, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of a protective order issued by a court of this state.+>>

SEC. 5. (a) Section 1.1 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 1531. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, (3) AB 2801 and SB 1682 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 1531, in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(b) Section 1.2 this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 2801. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, (3) AB 1531 and SB 1682 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 2801 in which case Sections 1, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(c) Section 1.3 this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and SB 1682. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 6380 of the Family Code, (3) AB 1531 and AB 2801 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 1682 in which case Sections 1, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(d) Section 1.4 this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 1531, and AB 2801. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, (3) SB 1682 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1531 and AB 2801, in which case Sections 1, 1.1, 1.2, 1.3, 1.5, 1.6, and 1.7 of this bill shall not become operative.

(e) Section 1.5 this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 2801, and SB 1682. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, (3) AB 1531 is not

enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2801 and SB 1682, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.6, and 1.7 of this bill shall not become operative.

(f) Section 1.6 this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 1531, and SB 1682. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 6380 of the Family Code, (3) AB 2801 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1531 and SB 1682, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.7 of this bill shall not become operative.

(g) Section 1.7 this bill incorporates amendments to Section 6380 of the Family Code proposed by this bill, AB 1531, AB 2801, and SB 1682. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) all four bills amend Section 6380 of the Family Code, and (3) this bill is enacted after AB 1531, AB 2801, and SB 1682, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 of this bill shall not become operative.

SEC. 6. (a) Section 3.1 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and AB 1201. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 2172 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1201, in which case Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by both this bill and AB 2172. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 13701 of the Penal Code, (3) AB 1201 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2172, in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2172. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201, and AB 2172, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative.

SEC. 7. 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 one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

**MISSION ON STATE MANDATES**

1000 WEST STREET, SUITE 300  
SANTA MONICA, CA 90401  
(916) 323-3562  
(916) 445-0278  
sminfo@csrm.ca.gov



October 5, 2000

Mr. Leonard Kaye  
County of Los Angeles  
Auditor-Controller's Office  
500 West Temple Street, Room 603  
Los Angeles, CA 90012

*And Affected State Agencies and Interested Parties (See Enclosed Mailing List)*

**RE: Claimant's Amendment to Test Claim/Draft Staff Analysis**  
*Mentally Disordered Offenders' Extended Commitment Proceedings*  
CSM 98-TC-09  
Penal Code Sections 2970, 2972, and 2972.1  
Added and Amended by Statutes of 1985, Chapter 1418; Statutes of 1986, Chapter 858;  
Statutes of 1988, Chapters 657 and 658; Statutes of 1989, Chapter 228; Statutes of 1991,  
Chapter 435; and Statutes of 2000, Chapter 324  
County of Los Angeles, Claimant

**Test Claim Amendment**

On September 19, 2000 the claimant filed an amendment to this test claim with the Commission. The amendment added Penal Code sections 2972 and 2972.1 (as added or amended by Statutes of 1986, Chapter 858; Statutes of 1987, Chapter 687; Statutes of 1989, Chapter 228; and Statutes of 2000, Chapter 324) to the test claim. These code sections establish the procedures for the court hearing on the petition to extend the commitment of mentally disordered offenders beyond their parole termination date, and establish the rights of the offender, including the right to a trial by jury and the appointment of a public defender for indigent offenders.

Pursuant to Government Code section 17557, subdivision (c), the claimant may amend the test claim at any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the original test claim.

Staff finds that the amendment, which adds Penal Code sections 2972 and 2972.1, substantially relates to the original test claim filing. Accordingly, staff has analyzed these code sections in the draft staff analysis, a copy of which is enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the test claim amendment and the draft staff analysis by **November 6, 2000**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties (on the mailing list), and to be accompanied by a proof of service on those parties.

Mr. Leonard Kaye  
October 5, 2000  
Page 2

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

**Hearing**

This test claim is set for hearing on **November 30, 2000** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will also appear. If you would like to request postponement of the hearing, please refer to section 1183.01 (c) of the Commission's regulations.

Please contact Camille Shelton, Staff Counsel, with questions regarding the above.

Sincerely,



Paul Higashi  
Executive Director

c. Test Claim Amendment, and Draft Staff Analysis and Supporting Documents

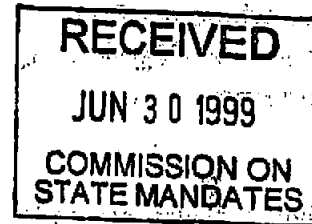




## DEPARTMENT OF FINANCE

915 L STREET  
SACRAMENTO, CA 95814-3708

June 28, 1999



Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
1300 I Street, Suite 950  
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of May 28, 1999, the Department of Finance has reviewed the test claim submitted by Los Angeles County (claimant) asking the Commission on State Mandates (COSM) to determine whether specified costs incurred under Chapter 698 of the Statutes of 1998 (AB 1201, Murray), and Chapter 701 of the Statutes of 1998 (AB 2172, Sweeney) are reimbursable state mandated costs (Claim Number CSM-98-TC-14 "Domestic Violence Arrests and Victim Assistance"). Commencing with page 1 of the test claim, the claimant identifies various new duties which it asserts are reimbursable state mandates:

The claimant asserts that Chapter 698 of the Statutes of 1998 (Chapter 698/98) has resulted in a reimbursable state-mandated local program by adding two new groups of victims to the list of persons who must be provided a "Victims of Domestic Violence" card, and by adding specified phone numbers to the contents of these cards. From our review of Chapter 698/98, it would appear that the facts concerning the reimbursable nature of this statute are substantially consistent with the assertions of the claimant. These provisions would appear to result in a reimbursable state-mandated local program similar to that identified by the COSM in Test Claim #4426 (Chapter 999 of the Statutes of 1991 and Chapter 224 of the Statutes of 1992).

However, we would note that, pursuant to Government Code Section 17581, as amended by Chapter 681 of the Statutes of 1998 (Chapter 681/98) (AB 1963, Aguiar), the California Legislature has suspended the mandates imposed by Chapter 1609 of the Statutes of 1984, which relate to law enforcement responses to domestic violence, including the provisions of Penal Code Section 13701 requiring distribution of a "Victims of Domestic Violence" card. As the COSM recognized in Test Claim #96-362-01 (Domestic Violence Incident Reporting), when a legislative mandate is suspended in the Budget Act, implementation of the program is optional for local agencies and is therefore not reimbursable, and that, consequently, any changes to an existing optional program are also not reimbursable. Therefore, until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at issue in the present matter would similarly not be reimbursable. We would additionally note that Chapter 681/98

continues the suspension of mandates during any period immediately following any fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year, thereby addressing the COSM's concern in Test Claim #96-362-01 regarding the State's liability for reimbursement of suspended mandates during periods in which the State operates without a budget.

The claimant also asserts that Chapter 701 of the Statutes of 1998 (Chapter 701/98) has resulted in a reimbursable state-mandated local program because it requires that law enforcement officers responding to a domestic violence call must provide emergency assistance to a victim's children, transportation of a victim and children to a hospital for treatment if necessary, and assist in the safe passage of a victim and children out of the victim's residence.

From our review of Chapter 701/98, it would appear that the provisions requiring the domestic violence training course for law enforcement officers to include techniques for recognizing the signs of domestic violence would not result in a reimbursable state-mandated local program, but would be satisfied by the Commission on Peace Officer Standards and Training.

Chapter 701/98 would also require local policies and standards for law enforcement officers responding to domestic violence calls to include emergency assistance to a victim's children, transportation of domestic violence victims and children to a hospital for treatment if necessary, and police assistance in the safe passage of domestic violence victims and children out of the victim's residence. We believe that these provisions may result in a reimbursable state-mandated local program. However, as noted above, the Legislature has suspended the mandate imposed by Chapter 1609 of the Statutes of 1984, and until such time as the Legislature may opt to remove its suspension of this mandate, we believe any provisions of Chapter 701/98 at issue in the present matter would also not be reimbursable.

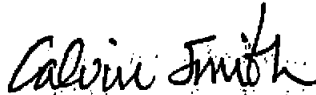
The claimant asserts that training costs for its officers related to the new domestic violence response guidelines would also be reimbursable by the State. In Test Claim #4376 (domestic violence response training), the COSM noted that the requirement to obtain the training is mandated on the officer, and not the local entity.

Per our discussion above, we have concluded that Chapter 698/98 and portions of Chapter 701/98 may have resulted in reimbursable state-mandated local programs. If the COSM reaches the same conclusion at its scheduled November 18, 1999 hearing on this matter, the nature and extent of the specific activities required of local agencies can be addressed in the parameters and guidelines which will then have to be developed for the program. We would note that, under both Chapter 698/98 and Chapter 701/98, there remains some measure of discretion available to local entities. The extent of such discretion can be determined in the development of the aforementioned parameters and guidelines.

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 May 28, 1999 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 either James A. Foreman, Principal Program Budget Analyst, or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



S. CALVIN SMITH  
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: "Domestic Violence Arrests and Victim Assistance"

Test Claim Number: Number CSM-98-TC-14

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, 8<sup>th</sup> Floor, Sacramento, CA 95814.

On June 28, 1999, 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 non-state 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, 8 Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
1300 I Street, Suite 950  
Sacramento, CA 95814  
Facsimile No. 445-0278

B-8

State Controller's Office  
Division of Accounting & Reporting  
Attention: William Ashby  
3301 C Street, Room 500  
Sacramento, CA 95816

B-29

Legislative Analyst's Office  
Attention Marianne O'Malley  
925 L Street, Suite 1000  
Sacramento, CA 95814

SB 90 Service

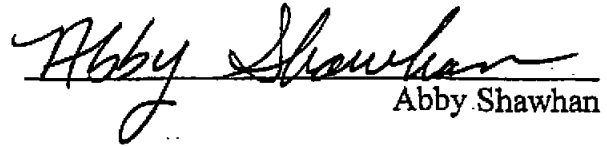
C/O David M. Griffiths & Associates  
Attention: Allan Burdick  
4320 Auburn Boulevard, Suite 200  
Sacramento, CA 95841

County of Los Angeles  
Department of Auditor-Controller  
Kenneth Hahn Hall of Administration  
Attention: Leonard Kaye  
500 West Temple Street, Suite 525  
Los Angeles, CA 90012

County of San Bernardino  
Office of Auditor / Controller / Recorder  
Attention : Marcia Faulkner  
222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415 - 0018

Wellhouse and Associates  
Attention: David Wellhouse  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

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 June 28, 1999 at Sacramento, California.

  
Abby Shawhan



COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

May 3, 2001

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

Dear Ms. Higashi:

**Review of State Agency Comments**  
**County of Los Angeles Test Claim, CSM-98-TC-14**  
**Domestic Violence Arrests and Victim Assistance**

We submit and enclose herein the subject review.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley  
Auditor-Controller

JTM:JN:EK  
Enclosures



Review of State Agency Comments  
County of Los Angeles Test Claim, CSM-98-TC-14  
Penal Code Sections 264.2, 13701, and 13519  
Statutes of 1998, Chapter 698; Statutes of 1998, Chapter 701  
Domestic Violence Arrests and Victim Assistance

We concur with the Department of Finance [Finance] finding that the subject test claim legislation has resulted in a "reimbursable state-mandated program".

S. Calvin Smith, Program Budget Manager with Finance wrote Paula Higashi, Executive Director of the Commission on State Mandates [COSM] and noted the following:

" The claimant asserts that Chapter 698 of the Statutes of 1998 (Chapter 698/98) has resulted in a reimbursable state-mandated program by adding two new groups of victims to the list of persons who must be provided a "Victims of Domestic Violence" card and by adding specified phone numbers to the contents of these cards. From our review of Chapter 698/98, it would appear that the facts concerning the reimbursable nature of this statute are substantially consistent with the assertions of the claimant. These provisions would appear to result in a reimbursable state-mandated local program similar to that identified by the COSM in Test Claim #4426 (Chapter 999 of the Statutes of 1991 and Chapter 224 of the Statutes of Statutes of 1992)".

We agree. The underlying duties to, for example, provide victims with a card have already been found to be reimbursable by COSM [in Test Claim #4426]. Such duties or services are currently funded by the Legislature. Importantly, the Legislature has not elected to stop funding this victim assistance program under the provisions of Section 17581 of the Government Code.

Therefore, the new and additional duties, imposed under the subject test claim legislation, as well as the original and funded duties, imposed under Chapter 999 of the Statutes of 1991 and Chapter 224 of the Statutes of Statutes of 1992, are reimbursable.

## Chapter 701/98

With regard to certain new victim services imposed under Chapter 701/98, Mr. Smith observes that:

"Chapter 701/98 would also require local policies and standards for law enforcement officers responding to domestic violence calls to include emergency assistance to a victim's children, transportation of domestic violence victims and children to a hospital for treatment if necessary, and police assistance in the safe passage of domestic violence victims and children out of the victim's residence. We believe that these provisions may result in a reimbursable state-mandated local program."

We agree. Certainly, the [above] new victim services are critical in assisting victims and their children in a domestic violence crisis.

## Chapter 1609/84 Does Not Bar Reimbursement

We disagree with Finance when they suggest that Chapter 1609/84 bars reimbursement. Mr. Smith hypothesizes that new services imposed under the test claim legislation may not be required at all. He reasons that similar services, imposed under Chapter 1609/84, are now 'optional' under the provisions of Section 17581 of the Government Code. In this regard, Mr. Smith notes that:

"... the California Legislature has suspended the mandates imposed by Chapter 1609 of the Statutes of 1984, which relate to law enforcement responses to domestic violence, including the provisions of Penal Code Section 13701 requiring the distribution of a "Victims of Domestic Violence" card".

However, Finance's premise is in error. Chapter 1609 of the Statutes of 1984, which relates to law enforcement responses to domestic violence does not include the provisions of Penal Code Section 13701 requiring the distribution of a "Victims of Domestic Violence" card". In fact, Chapter 1609 of the Statutes of 1984 does not even mention, or refer to, a domestic violence card.

The requirement to provide domestic violence cards is not found in Chapter 1609/84. Therefore, Chapter 1609/84's 'optional' requirements are different from those mandated requirements imposed under the test claim legislation. Such 'optional' requirements are, then, not relevant in deciding whether the mandated test claim requirements are reimbursable.

Further, relevant state-mandated programs are still mandated. These programs have not been made 'optional' by the Legislature. For example, the domestic violence card and victim assistance duties imposed under Chapter 999/91 and Chapter 224/92 have not been made 'optional' under Section 17581. Such duties are still mandatory --- still reimbursable!

Accordingly, Section 17581 is not available to bar recovery of otherwise reimbursable services. Here, such services are reimbursable as claimed herein.



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427



**Review of State Agency Comments  
County of Los Angeles Test Claim, CSM-98-TC-14  
Penal Code Sections 264.2, 13701, and 13519  
Statutes of 1998, Chapter 698; Statutes of 1998, Chapter 701  
Domestic Violence Arrests and Victim Assistance**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims and supplemental amendments thereto, reviews of State agency comments, Commission staff analyses and extensions of time to respond thereto and to postpone hearings thereon, and for proposing parameters and guidelines (Ps&Gs) and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the attached review of State agency comments.

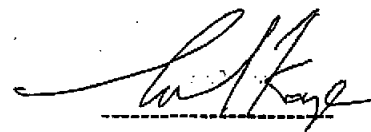
Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that the County is required to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

5/03/01; Los Angeles, CA  
Date and Place

  
Signature

# Commission on State Mandates

Originated: 05/28/1999

Today's Date 05/03/2001

## Mailing List

CSM/SB # 98-TC-14

Claim Title County of Los Angeles

Government Code Section

Chapters 698/98 &amp; 701/98

Issue Domestic Violence Arrests and Victim Assistance

Mr. James Apps (A-15),  
Department of Finance

915 L Street Room 8020  
Sacramento CA 95814

Tel: (916) 445-8913  
FAX: (916) 327-0225

Mr. Allan Burdick,  
DMG-MAXIMUS

4320 Auburn Blvd. Suite 2000  
Sacramento CA 95841

Tel: (916) 485-8102  
FAX: (916) 485-0111

Ms. Paula Higashi

Executive Director

Commission on State Mandates

980 Ninth Street, Suite 300 Tel: (916) 323-3562  
Sacramento, CA 95814 Fax: (916) 445-0278

*originals*

Mr. Paul Minney, Interested Party  
Girard & Vinson

1676 N. California Blvd. Suite 450  
WALNUT CREEK CA 94596

Tel: (925) 746-7660  
FAX: (925) 935-7995

Mr. Andy Nichols,  
Yavrinek Trine Day & Co., LLP

8300 Fair Oaks Blvd, Suite 403  
CARMICHAEL CA 95608

Tel: (916) 944-7394  
FAX: (916) 944-8657

Ms. Virginia Papari, Deputy Director  
Office of Criminal Justice Planning

1130 K Street Suite 300  
Sacramento CA 95814

Tel: (916) 324-9140  
FAX: (916) 327-5673

Mr. Palge Vorhies (B-8), Bureau Chief

State Controller's Office

Division of Accounting & Reporting

3301 C Street Suite 500  
Sacramento CA 95816

Tel: (916) 445-8756  
FAX: (916) 323-6527



CSM/SB # 98-TC-14

Claim Title County of Los Angeles

Government Code Section

Chapters 698/98 & 701/98

Issue Domestic Violence Arrests and Victim Assistance

Mr. David Wellhouse,  
Wellhouse & Associates

9175 Kiefer Blvd Suite 121  
Sacramento CA 95826

Tel: (916) 368-9244  
FAX: (916) 368-5723



COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427



TYLER McCAULEY  
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 4<sup>th</sup> day of May, 2001, I served the attached:

Documents: Review of State Agency Comments, County of Los Angeles Test Claim, CSM-98-TC-14, Domestic Violence Arrest and Victim Assistance, including a 1 page letter dated 5/3/01, a 3 page narrative, and a 1 page declaration of Leonard Kaye, all pursuant to CSM-98-TC-14, now pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

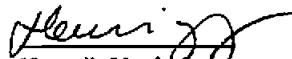
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates and State Controller's Office- FAX as well as mail of originals.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

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

Executed this 4<sup>th</sup> day of May, 2001, at Los Angeles, California.

  
Hasmik Yaghobyan



COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

May 3, 2001

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

Dear Ms. Higashi:

**Review of State Agency Comments**  
**County of Los Angeles Test Claim, CSM-98-TC-14**  
**Domestic Violence Arrests and Victim Assistance**

We submit and enclose herein the subject review.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

J. Tyler McCauley  
Auditor-Controller

JTM:JN:LK  
Enclosures



Review of State Agency Comments  
County of Los Angeles Test Claim, CSM-98-TC-14  
Penal Code Sections 264.2, 13701, and 13519  
Statutes of 1998, Chapter 698; Statutes of 1998, Chapter 701  
Domestic Violence Arrests and Victim Assistance

We concur with the Department of Finance [Finance] finding that the subject test claim legislation has resulted in a "reimbursable state-mandated program".

S. Calvin Smith, Program Budget Manager with Finance wrote Paula Higashi, Executive Director of the Commission on State Mandates [COSM] and noted the following:

" The claimant asserts that Chapter 698 of the Statutes of 1998 (Chapter 698/98) has resulted in a reimbursable state-mandated program by adding two new groups of victims to the list of persons who must be provided a "Victims of Domestic Violence" card and by adding specified phone numbers to the contents of these cards. From our review of Chapter 698/98, it would appear that the facts concerning the reimbursable nature of this statute are substantially consistent with the assertions of the claimant. These provisions would appear to result in a reimbursable state-mandated local program similar to that identified by the COSM in Test Claim #4426 (Chapter 999 of the Statutes of 1991 and Chapter 224 of the Statutes of Statutes of 1992)".

We agree. The underlying duties to, for example, provide victims with a card have already been found to be reimbursable by COSM [in Test Claim #4426]. Such duties or services are currently funded by the Legislature. Importantly, the Legislature has not elected to stop funding this victim assistance program under the provisions of Section 17581 of the Government Code.

Therefore, the new and additional duties, imposed under the subject test claim legislation, as well as the original and funded duties, imposed under Chapter 999 of the Statutes of 1991 and Chapter 224 of the Statutes of Statutes of 1992, are reimbursable.

## Chapter 701/98

With regard to certain new victim services imposed under Chapter 701/98, Mr. Smith observes that:

"Chapter 701/98 would also require local policies and standards for law enforcement officers responding to domestic violence calls to include emergency assistance to a victim's children, transportation of domestic violence victims and children to a hospital for treatment if necessary, and police assistance in the safe passage of domestic violence victims and children out of the victim's residence. We believe that these provisions may result in a reimbursable state-mandated local program."

We agree. Certainly, the [above] new victim services are critical in assisting victims and their children in a domestic violence crisis.

## Chapter 1609/84 Does Not Bar Reimbursement

We disagree with Finance when they suggest that Chapter 1609/84 bars reimbursement. Mr. Smith hypothesizes that new services imposed under the test claim legislation may not be required at all. He reasons that similar services, imposed under Chapter 1609/84, are now 'optional' under the provisions of Section 17581 of the Government Code. In this regard, Mr. Smith notes that:

"... the California Legislature has suspended the mandates imposed by Chapter 1609 of the Statutes of 1984, which relate to law enforcement responses to domestic violence, including the provisions of Penal Code Section 13701 requiring the distribution of a "Victims of Domestic Violence" card".

However, Finance's premise is in error. Chapter 1609 of the Statutes of 1984, which relates to law enforcement responses to domestic violence does not include the provisions of Penal Code Section 13701 requiring the distribution of a "Victims of Domestic Violence" card". In fact, Chapter 1609 of the Statutes of 1984 does not even mention, or refer to, a domestic violence card.

The requirement to provide domestic violence cards is not found in Chapter 1609/84. Therefore, Chapter 1609/84's 'optional' requirements are different from those mandated requirements imposed under the test claim legislation. Such 'optional' requirements are, then, not relevant in deciding whether the mandated test claim requirements are reimbursable.

Further, relevant state-mandated programs are still mandated. These programs have not been made 'optional' by the Legislature. For example, the domestic violence card and victim assistance duties imposed under Chapter 999/91 and Chapter 224/92 have not been made 'optional' under Section 17581. Such duties are still mandatory --- still reimbursable.

Accordingly, Section 17581 is not available to bar recovery of otherwise reimbursable services. Here, such services are reimbursable as claimed herein.



**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427



J. TYLER McCAULEY  
AUDITOR-CONTROLLER

**Review of State Agency Comments  
County of Los Angeles Test Claim, CSM-98-TC-14  
Penal Code Sections 264.2, 13701, and 13519  
Statutes of 1998, Chapter 698; Statutes of 1998, Chapter 701  
Domestic Violence Arrests and Victim Assistance**

**Declaration of Leonard Kaye**

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims and supplemental amendments thereto, reviews of State agency comments, Commission staff analyses and extensions of time to respond thereto and to postpone hearings thereon, and for proposing parameters and guidelines (Ps&Gs) and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the attached review of State agency comments.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that the County is required to provide new State-mandated services and thus incur costs which are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

5/03/01, Los Angeles, CA  
Date and Place

[Signature]  
Signature

# Commission on State Mandates

Originated: 05/28/1999

Today's Date 05/03/2001

## Mailing List

C5M/SB # 98-TC-14

Claim Title County of Los Angeles

Government Code Section

Chapters 698/98 & 701/98

Issue Domestic Violence Arrests and Victim Assistance

Mr. James Apps (A-15)  
Department of Finance

915 L Street Room 8020  
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FAX: (916) 327-0225

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DMG-MAXIMUS

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Executive Director  
Commission on State Mandates

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Girard & Vinson

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Mr. Andy Nichols,  
Vavrinek Trinc Day & Co., LLP

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CARMICHAEL CA 95608

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Ms. Virginia Papari, Deputy Director  
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Sacramento CA 95814

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FAX: (916) 327-6673

Mr. Paige Vorhies (B-8); Bureau Chief

State Controller's Office  
Division of Accounting & Reporting  
3301 C Street Suite 500  
Sacramento CA 95816

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PostNet brand fax transmittal memo 7/571		# of pages
To	Paula Higashi	8
Co.	County of Los Angeles	
Dept.	C5M	
Fax #	916-945-0278	
From	Leonard Kaye	
Co.	LA County	
Phone	913-947-8564	
Fax #	913-617-8106	

**RECEIVED**  
MAY 04 2001  
COMMISSION ON  
STATE MANDATES

Government Code Section

Chapters 698/98 & 701/98

Issue Domestic Violence Arrests and Victim Assistance

Mr. David Wellhouse,  
Wellhouse & Associates

9175 Kiefer Blvd Suite 121  
Sacramento CA 95826

Tel: (916) 368-9244  
FAX: (916) 368-5723



COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
500 WEST TEMPLE STREET, ROOM 525  
LOS ANGELES, CALIFORNIA 90012-2766  
PHONE: (213) 974-8301 FAX: (213) 626-5427



TYLER McCAULBY  
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 4<sup>th</sup> day of May, 2001, I served the attached:

Documents: Review of State Agency Comments, County of Los Angeles Test Claim, CSM-98-TC-14, Domestic Violence Arrest and Victim Assistance, including a 1 page letter dated 5/3/01, a 3 page narrative, and a 1 page declaration of Leonard Kaye, all pursuant to CSM-98-TC-14, now pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates and State Controller's Office- FAX. as well as mail of originals.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

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

Executed this 4<sup>th</sup> day of May, 2001, at Los Angeles, California.

Hasmik Yaghobyan



**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3582  
(916) 445-0278  
E-mail: csmInfo@csm.ca.gov

April 12, 2002

Leonard Kaye, Esq.  
Auditor - Controller  
County of Los Angeles  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

*And Interested Parties and State Agencies (See enclosed mailing list).*

Re: STIPULATION TO STAY PROCEEDINGS  
Domestic Violence Arrests and Victim Assistance (98-TC-14)  
County of Los Angeles, Claimant  
Chapter 698, Statutes of 1998, Penal Code sections 264.2 and 13701  
Chapter 701, Statutes of 1998, Penal Code sections 13701 and 13519

Dear Mr. Kaye:

The Commission on State Mandates and the Department of Finance have executed the attached stipulation to stay proceedings on the Domestic Violence Arrests and Victim Assistance test claim until the litigation regarding domestic violence training for peace officers is resolved.

As you are aware, the only test claim issues being litigated are the training issues, not the incident reporting issues.

An original stipulation is enclosed for your records. Please call Eric Feller at (916) 323-8224 if you have any questions.

Sincerely,

PAULA HIGASHI  
Executive Director

Enclosures



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON

*Domestic Violence Arrests and Victim Assistance*

Penal Code sections 264.2, 13701 and 13519 as amended by Statutes of 1998, Chapters 698 and 701

Filed on May 21, 1999

By County of Los Angeles, Claimant.

No. 98-TC-14

WAIVER OF PROCEDURAL REQUIREMENTS PURSUANT TO GOVERNMENT CODE SECTION 17554

FINAL AGREEMENT

The Commission on State Mandates, the County of Los Angeles, Claimant, and the Department of Finance, agree as follows:

1. This agreement shall apply to the above-described test claim filed on May 21, 1999, by the County of Los Angeles.
2. Government Code section 17530 requires the Executive Director to expedite all matters within the jurisdiction of the Commission; Government Code section 17553 requires the Commission to adopt procedures for receiving claims and for providing a hearing on claims; Government Code section 17554 authorizes the parties to waive procedural requirements in order to expedite processing of claims; and Government Code section 17555 requires the Commission within 10 days after receipt of a test claim to set a date for a public hearing on the claim within 75 days.
3. Title 2, California Code of Regulations, section 1183.01 sets forth the timelines used as the reference for the timely processing of test claims; sections 1183.02, 1183.03, 1183.07, and 1187- 1188.2 specify the procedures for review, comment, and determination of test claims.
4. The judicial determination of *County of Los Angeles et al. v. California Department of Finance, et al.*, Superior Court Case No. BS064497, currently pending in the Court of Appeal, Second Appellate District, will address substantial legal issues that may relate to issues raised in the County of Los Angeles' test claim.

5. The County of Los Angeles' test claim would be expedited if the processing of the claim follows the final decision in the *County of Los Angeles* case described in paragraph 4 above.
6. Notwithstanding Government Code sections 17530, 17553, 17555 and the Commission regulations enumerated in paragraph 3 above, all proceedings in the County of Los Angeles' test claim, shall be stayed without prejudice to the Claimant in regard to the period of time that the Claimant is eligible for reimbursement should the Commission determine a state mandate exists. The stay shall also be without prejudice to the ability of state agencies to file any comments on the test claim, and of the Claimant to file any rebuttal, permitted under the applicable statutes and Commission regulations. The stay shall remain in effect until there is a final decision in the *County of Los Angeles* case described in paragraph 4 above.
7. No later than 60 days following the final decision in the *County of Los Angeles* case, the Commission on State Mandates shall resume proceedings pursuant to Government Code sections 17530, 17553, 17555 and regulations enumerated in paragraph 3 above.
8. For purposes of this Agreement, a decision in the *County of Los Angeles* case becomes final on the date that any rehearing or review of the case may no longer be granted by a court of competent jurisdiction.

COMMISSION ON STATE MANDATES

Paula Higashi

Date: 4-9-02

By: Paula Higashi, Executive Director

CLAIMANT

J. Tyler McCauley

Date: 4-2-02

By: J. Tyler McCauley, Auditor-Controller  
County of Los Angeles

DEPARTMENT OF FINANCE

Susan Geanacou

Date: 4-9-02

By: Susan Geanacou, Sr. Staff Counsel

# Commission on State Mandates

List Date: 05/28/1999

Mailing Information

## Mailing List

Claim Number 98-TC-14 Claimant County of Los Angeles

Subject 698/98 & 701/98

Issue Domestic Violence Arrests and Victim Assistance

Mr. Allan Burdlok,  
MAXIMUS

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Interested Person

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State Agency

698/98 &amp; 701/98

Domestic Violence Arrests and Victim Assistance

Mr. Leonard Kaye, Esq.,  
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Auditor-Controller's Office  
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Claimant

Mr. Tom Lutzenberger, Principal Analyst (A-15)  
Department of Finance

915 L Street, 6th Floor  
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Interested Person

Mr. Paul Minney,  
Spector, Middleton, Young & Minney, LLP

7 Park Center Drive  
Sacramento Ca 95825

Tel: (916) 646-1400  
FAX: (916) 646-1300

Interested Person

Mr. Andy Nichols, Senior Manager  
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Interested Person

Mr. Steve Shields,  
Shields Consulting Group, Inc.

1536 36th Street  
Sacramento CA 95816

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Interested Person

Subject

698/98 & 701/98

Issue

Domestic Violence Arrests and Victim Assistance

Mr. Jim Spano, (B-8)  
State Controller's Office  
Division of Audits (B-8)  
300 Capitol Mall, Suite 518  
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State Agency

Mr. David Wellhouse,  
David Wellhouse & Associates, Inc.

9175 Klefer Blvd Suite 121  
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Tel: (916) 368-9244  
FAX: (916) 368-5723

Interested Person

## COMMISSION ON STATE MANDATES

80 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
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November 26, 2003

Mr. Leonard Kaye  
Office of the Auditor-Controller  
County of Los Angeles  
500 West Temple Street, Room 525  
Los Angeles, CA 90012-2766

*And Affected Parties and State Agencies (See Enclosed Mailing List)*

**Draft Staff Analysis and Hearing Date**

*Domestic Violence Arrests and Victim Assistance, CSM 98-TC-14*  
Penal Code Sections 264.2, 13701, and 13519  
Statutes 1998, Chapter 698; and Statutes 1998, Chapter 701

Dear Mr. Kaye:

The draft staff analysis for this test claim is enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis by **December 17, 2003**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

**Hearing**

This test claim is set for hearing on Thursday, **January 29, 2004** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about January 8, 2004. 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, subdivision (c)(2), of the Commission's regulations.

If you have any questions on the above, please contact Eric Feller at (916) 323-8221.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula Higashi".

Paula Higashi  
Executive Director  
Enc. Draft Staff Analysis

cc. Mailing List (current mailing list attached)

WORKING BINDER:

CHRON:

DATE: 11/20/03

INITIAL: VS

MAILED: Mail Lib. FAXED:

ITEM \_\_

**TEST CLAIM  
DRAFT STAFF ANALYSIS**

Penal Code Sections 264.2, 13701, and 13519  
Statutes 1998, Chapters 698 and 701

*Domestic Violence Arrests and Victim Assistance*

County of Los Angeles, Claimant

---

**EXECUTIVE SUMMARY**

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS

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## STAFF ANALYSIS

### Claimant

County of Los Angeles

### Chronology

- 5/21/99 Claimant files test claim with the Commission
- 6/28/99 Department of Finance (DOF) files comments on test claim with the Commission
- 1/11/01 Claimant requested a time extension to file a reply to DOF's comments until 30 days after the California Supreme Court's decision in *Carmel Valley Fire Protection District v. State of California* (2001) 25 Cal. 4th 287, (*Carmel Valley II*)<sup>1</sup>
- 1/16/01 Commission granted Claimant's request for an extension
- 4/5/01 *Carmel Valley II* decision was issued by the California Supreme Court
- 5/3/01 Claimant filed response to DOF's comments
- 4/9/02 Commission staff, claimant, and DOF stipulate to waive procedural requirements on the test claim until judicial determination of *County of Los Angeles v. California Department of Finance, et. al.*
- 7/28/03 Decision issued in *County of Los Angeles v. California Department of Finance* (2003) 110 Cal. App. 4th 1176
- 11/26/03 Commission staff issues draft staff analysis

### Background

#### A. Test Claim Legislation

In 1998, the Legislature enacted the test claim legislation to amend domestic violence statutes in the Penal Code. Penal Code section 264.2 was amended to add two groups of victims that must be given a victim of domestic violence/rape card (victim card). Section 13519<sup>2</sup> requires peace officers who normally respond to domestic violence calls to take a domestic violence training course offered by the Commission on Peace Officer Standards and Training (POST). The test claim statute amended section 13519 to add "signs of domestic violence" to the course topics.

Section 13701, which contains the standards for officers' responses to domestic violence calls, was amended to modify these standards by Statutes 1998, chapter 702 (not chapters 698 or 701 pled by claimant, which is discussed below).

#### B. Prior Commission Decisions

Prior versions of the test claim statutes have been the subjects of past test claims.

**Domestic Violence test claim:** In January 1987, the Commission adopted the *Domestic Violence* Statement of Decision (CSM-4222) finding that Statutes 1984, chapter 1609 and Statutes 1985,

---

<sup>1</sup> J. Tyler McCauley, County of Los Angeles, letter to Paula Higashi, January 11, 2001.

<sup>2</sup> All statutory references are to the Penal Code unless otherwise indicated.

chapter 668 (Pen. Code, §§ 13700-13731) are state-mandated programs that require local law enforcement agencies to: "develop, adopt and implement policies and standards for officer's responses to domestic violence calls; ... maintenance of records and recording systems, and ... specific written information be provided to victims of domestic violence." In adopting the parameters and guidelines for this test claim in February 1987, the Commission found the following to be reimbursable:

- (1) For the costs associated with the development, adoption and implementation of policies and standards, termed a Domestic Violence Policy, pursuant to California Penal Code Section 13701, involving domestic violence implemented by January 1, 1986.
- (2) For the costs associated with the development of a system for recording all domestic violence-related calls for assistance to include whether weapons were involved.
- (3) For the costs incurred after January 1, 1986, for preparation of a statement of information for victims of incidents of domestic violence.
- (4) For monthly summary reports compiled by the local agency and submitted to the Attorney General, State of California.
- (5) For the costs associated with the development of a Domestic Violence Incident Report form used to record and report domestic violence calls.

Except for the current fiscal year, however, the Legislature has suspended these activities (the *Domestic Violence* mandate, Stats. 1984, ch. 1609). Except for the 2003-04 budget, the activities have been suspended every year since the operative date of this test claim statute (January 1, 1999) pursuant to its authority in Government Code section 17581.<sup>3</sup>

**Rape Victims Counseling Center Notice test claim:** In September 1993, the Commission adopted the *Rape Victims Counseling Center Notice* Statement of Decision (CSM-4426), finding that Statutes 1991, chapter 999 and Statutes 1992, chapter 224 (Pen. Code, § 264.2, subds. (b)(1) & (b)(2), & Pen. Code, § 13701) is a state-mandated program. The parameters and guidelines list the following reimbursable activities:

...requiring local law enforcement agencies to notify the local rape victim counseling center when the victim is transported to a hospital for examination and the victim approves of that notification; subject to the approval of the victim and upon request from the treating hospital, to verify whether the local rape victim counseling center has been notified; to revise the "Victims of Domestic Violence" card by adding information to assist rape victims, and to furnish a rape victim with a "Victims of Domestic Violence" card.

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<sup>3</sup> Except for the 2003-2004 budget, the operative date of the test claim statutes (January 1, 1999), Statutes 1984, chapter 1609, has been suspended by the Legislature pursuant to Government Code section 17581 as follows: Statutes 1998, chapter 282, Item 9210-295-001, Schedule (8), Provision 2; Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3. The suspension was repealed in 2003-2004 according to the Final Change Book. See <<http://www.documents.dgs.ca.gov/osp/GovernorsBudget/pdf/2003-04fchgbk.pdf>> page 655, as of November 24, 2003.

**Domestic Violence Arrest Policies and Standards test claim:** In September 1997, the Commission adopted the *Domestic Violence Arrest Policies and Standards* Statement of Decision (96-362-02), finding that Penal Code section 13701, (as amended by Stats. 1995, ch. 246) constitutes a state-mandated program for development, adoption, and implementation of domestic violence arrest procedures.

**Domestic Violence Training and Incident Reporting test claim:** In February 1998, the Commission adopted the *Domestic Violence Training and Incident Reporting* Statement of Decision (96-362-01) finding that Penal Code section 13519, subdivision (e)<sup>4</sup> (amended by Stats. 1995, ch. 965) is not a reimbursable state-mandated program. This statute requires local law enforcement officers below the rank of supervisor who normally respond to domestic violence calls to complete an updated course of instruction on domestic violence every two years. The Commission found that because law enforcement officers are already required to take 24 hours of continuing education every two years, requiring the two-hour domestic violence course as part of that 24-hour requirement is not a higher level of service.

The Commission's decision was upheld by the Second District Court of Appeal in *County of Los Angeles v. California Department of Finance*, which held the statute did not impose a reimbursable state-mandated program because it merely "directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training."<sup>5</sup>

#### **Claimant's Position**

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant requests reimbursement for the costs of updating policies and procedures and modifying record-keeping systems. Claimant also requests reimbursement for continuing costs of providing additional information to victims, providing additional emergency assistance, and additional training to law enforcement officers.

#### **State Agency Position**

DOF comments regarding Statutes 1998, chapter 698, that "these provisions would appear to result in a reimbursable state-mandated local program..." (Chapter 698 added two new groups of victims to those that receive a victim card). However, DOF notes that the Legislature has suspended the mandates imposed by Statutes 1984, chapter 1609 relating to law enforcement responses to domestic violence, and argues that this includes the provisions of section 13701 requiring distribution of a victim card. According to DOF, "until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at-issue in the present matter would similarly not be reimbursable."

Regarding Statutes 1998, chapter 701, DOF states that requiring the domestic violence training course for law enforcement officers to include techniques for recognizing the signs of domestic violence would be satisfied by POST. As to the rest of chapter 701 (responding to domestic violence calls to include emergency assistance to the victim's children, transportation of the domestic

<sup>4</sup> This is currently section 13519, subdivision (g) as amended by Statutes 1998, chapter 701.

<sup>5</sup> *County of Los Angeles v. California Department of Finance* (2003) 110 Cal.App. 4th 1176, 1194.

violence victim and children to a hospital for treatment if necessary, and police assistance in safe passage out of the victim's residence), DOF believes "that these provisions may result in a reimbursable state-mandated local program." However, based on the Legislature's suspension of Statutes 1984 chapter 1609, DOF believes "any provision of Chapter 701/98 at issue ... would not be reimbursable."

No other state agencies commented on the test claim.

### Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>6</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>7</sup> "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>8</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>9</sup> In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>10</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal

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<sup>6</sup> Article XIII B, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

<sup>7</sup> *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

<sup>8</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>9</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that "activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice." The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or "draconian" consequences. (*Id.*, at 754.)

<sup>10</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

requirements in effect immediately before the enactment of the test claim legislation.<sup>11</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>12</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>13</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>14</sup>

This test claim presents the following issues:

- Does the Commission have jurisdiction over Penal Code section 13701 as amended by Statutes 1998, chapter 698 and 701?
- Does the suspension of Statutes 1984, chapter 1609 include the test claim amendments to sections 264.2 and 13519?
- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on local law enforcement within the meaning of article XIII B, section 6?
- Does the test claim statute impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

**Issue 1 - Does the Commission have jurisdiction over Penal Code section 13701 as amended by Statutes 1998, chapter 698 and 701?**

This statute requires law enforcement to "develop, adopt, and implement written policies ...for officers' responses to domestic violence calls...." It was amended by Statutes 1998, chapter 702 (Assem. Bill No. 2177). The last chaptered bill is assigned the higher chapter number,<sup>15</sup> which becomes law when legislative bills are double or triple-joined, as they were in this case.<sup>16</sup> Claimant

<sup>11</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>12</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>13</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>14</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma v. Commission on State Mandates, supra*, 84 Cal.App.4th at page 1280.

<sup>15</sup> See Government Code sections 9510 and 9605.

<sup>16</sup> Double-joined bills are two bills that propose to amend the same code section, drafted so that the amended bill does not override the provisions of the bill that affects the same section. In this case, section 6, subdivision (c) of Statutes 1998, chapter 702 states:

(c) Section 3.3 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2172. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201, [chapter 698].

did not plead chapter 702, but instead pled chapters 698 and 701. Neither chapter 698 nor 701 amended or became law as to Penal Code section 13701. Therefore staff makes no findings on Penal Code section 13701 because the Commission lacks jurisdiction over the statute as pled.<sup>17</sup>

**Issue 2 - Does the suspension of Statutes 1984, chapter 1609 include the test claim amendments to sections 264.2 and 13519?**

DOF comments that the Legislature has suspended<sup>18</sup> the mandates imposed by Statutes 1984, chapter 1609 relating to law enforcement responses to domestic violence. According to DOF, "until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at issue in the present matter would similarly not be reimbursable."

Claimant disagrees, arguing that Statutes 1984, chapter 1609 does not include the victim card provisions.<sup>19</sup> Because chapter 1609's 'optional' requirements are different from the mandated requirements in the test claim legislation, chapter 1609 is not relevant as to whether the test claim is reimbursable. Claimant further contends that relevant state-mandated programs have not been made 'optional' by the Legislature, such as victim card and victim assistance duties imposed under Statutes 1991, chapter 999 and Statutes 1992, chapter 224. Thus, claimant argues that the duties imposed by this test claim legislation are also mandatory and reimbursable.

Government Code section 17581, subdivision (a) states:

(a) No 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 all of the following apply:

(1) The statute or executive order, or portion thereof, has 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 pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in

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and AB 2172, [chapter 701] in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative. [Emphasis added.]

<sup>17</sup> Government Code section 17555; California Code of Regulations, title 2, section 1183, subdivision (d)(1).

<sup>18</sup> Pursuant to Government Code Section 17581.

<sup>19</sup> Claimant cited the victim card provisions of Penal Code section 13701, but the arguments also apply to the victim card provisions of Penal Code 264.2. Claimant's comments implicitly refer to the following prior Commission decisions: (1) *Domestic Violence* (CSM-4222) Statutes 1984, chapter 1609 and Statutes 1985, chapter 668; and (2) *Rape Victims Counseling Center Notice* (CSM-4426) Statutes 1991, chapter 999 and Statutes 1992, chapter 224.

the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

Statutes 1984, chapter 1609 was suspended in the Budget Act for fiscal years 1992-93 through 2002-03<sup>20</sup> pursuant to Government Code section 17581.<sup>21</sup> The Legislature assigned it a zero-dollar appropriation, thereby making the activities optional (a list of the activities in the parameters and guidelines appears above under "Background").

Staff disagrees with DOB. The suspended statutes only refer to "non-consecutive Sections of 13700 through 13731 [of] the California Penal Code."<sup>22</sup> The Legislature has never suspended sections 264.2 or 13519. Under Government Code section 17581, (1) the statute must have been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service, and (2) the statute must be specifically identified in the Budget for nonreimbursement. These requirements have not been met. The prior test claim on section 13519, as amended by Statutes 1995, chapter 965 (96-362-01) was denied by the Commission, which decision was upheld by the Court of Appeal. Thus, section 13519 has not been suspended. Similarly, the *Rape Victims Counseling Center Notice* test claim (section 264.2, as added by Stats. 1991, ch. 999) has never been identified by the Legislature for suspension. In addition, the suspended activities specified in the *Domestic Violence* parameters and guidelines listed above under "Background," make no mention of a victim card.

Therefore, staff finds that the legislative suspension of Statutes 1984, chapter 1609 does not include the test claim amendments to sections 264.2 or 13519.

### Issue 3 - Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

#### A. Does the test claim legislation impose state-mandated duties?

**Excluding the support person (Pen. Code, § 264.2, subd. (b)(4)):** Section 1.5 of Statutes 1998, chapter 698 added this subdivision regarding rape and sexual assault victims. It authorizes but does not require that a support person of the victim's choosing "be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination." Exclusion of

<sup>20</sup> Except for the 2003-2004 budget, since the operative date of the test claim statutes (January 1, 1999), Statutes 1984, chapter 1609, has been suspended by the Legislature pursuant to Government Code section 17581 as follows: Statutes 1998, chapter 282, Item 9210-295-001, Schedule (8), Provision 2; Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3.

<sup>21</sup> The suspension was repealed in 2003-2004 according to the Final Change Book. See <<http://www.documents.dgs.ca.gov/osp/GovernorsBudget/pdf/2003-04fchgbk.pdf>> page 655, as of November 24, 2003.

<sup>22</sup> Parameters and Guidelines for the *Domestic Violence* test claim (CSM-4222) adopted February 1987.

the support person would be at the officer's discretion. Because this section does not require a local government activity, staff finds that it is not subject to article XIII B, section 6.<sup>23</sup>

**B. Does the test claim legislation qualify as a program under article XIII B, section 6?**

In order for the remaining test claim legislation (Penal Code sections 264.2, subdivision (a) and 13519) to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>24</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>25</sup>

The test claim statutes pertain to victim card distribution and domestic violence training for law enforcement. These activities are peculiarly governmental public safety functions administered by local law enforcement agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements on local law enforcement agencies that do not apply generally to all residents and entities of the state. Therefore, staff finds the test claim statutes constitute a "program" within the meaning of article XIII B, section 6.

**Issue 4: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?**

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>26</sup>

**Domestic violence training curriculum (Pen. Code, § 13519):** Section 13519 requires POST to implement a course for training law enforcement officers in handling domestic violence complaints and develop guidelines for response to domestic violence. As stated above, it was amended in 1995 to require<sup>27</sup> local law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. Section 1 of the test claim statute (Stats. 1998, ch. 701) amended section 13519 to add "signs of domestic violence" to the list of procedures and techniques in which officers must be trained.

The Commission found that section 13519 is not an increased level of service in an earlier test claim, *Domestic Violence Training and Incident Reporting* (96-362-01). The Commission determined that because law enforcement officers are already required to take 24 hours of training every two years, requiring the two-hour domestic violence course within the existing 24-hour requirement is not a higher level of service. The California Court of Appeal recently upheld the Commission's decision

<sup>23</sup> *Department of Finance v. Commission on State Mandates*, supra, 30 Cal.4th 742. *Long Beach Unified School Dist. v. State of California*, supra, 225 Cal.App.3d 155, 174.

<sup>24</sup> *County of Los Angeles*, supra, 43 Cal.3d 46, 56.

<sup>25</sup> *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

<sup>26</sup> *Lucia Mar Unified School District v. Honig*, supra, 44 Cal.3d 830, 835.

<sup>27</sup> As amended by Statutes 1995, chapter 965.



in *County of Los Angeles v. Commission on State Mandates*.<sup>28</sup> Since the court's holding was based on the 1995 version of section 13519, the only issue is whether the chapter 701 amendment could alter that conclusion. Staff finds that it could not.

The *County of Los Angeles* court stated,

"...local law enforcement agencies may choose from a menu of course offerings to fulfill the 24-hour requirement. ...Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. ...However, merely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources ...by mandating the inclusion of domestic violence training. ...[T]he state is requiring certain courses to be placed within an already existing framework of training. This loss of "flexibility" does not... require the County to expend funds that previously had been expended on the POST program by the State."<sup>29</sup>

In adding "the signs of domestic violence" to the domestic violence training content, the section 13519 amendment is not a higher level of service because it did not alter the factors upon which the court relied or increase the existing framework of training. Local law enforcement's requirement to take the two-hour domestic violence course, or its requirement to take 24-hours of training every two years, remain the same. The court held that the training required by section 13519 was not a higher level of service because the state had not "shifted from itself to the County the burdens of state government," nor had it "shifted from itself the cost of a program previously administered and funded by the state."<sup>30</sup> These factors are not changed by the test claim statute. Therefore staff finds that section 13519, as amended by Statutes 1998, chapter 701, does not constitute a new program or higher level of service.

**Providing a victim card (Pen. Code, § 264.2, subd. (a)):** Section 1.5 of Statutes 1998, chapter 698 amended subdivision (a) of section 264.2, which specifies the types of victims who must be provided with a victim card. The test claim statute adds two crimes--alleged battery or corporal injury on a spouse or other specified victim--to the list of those for which a victim card is provided to the victim. The test claim statute amended the provision as follows (added text in bold italics):

(a) Whenever there is an alleged violation *or violations of subdivision (e) of Section 243*, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in *subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code*.

Penal Code section 243, subdivision (e) involves battery against "a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship." Penal Code section 273.5 involves willful infliction of corporal injury on a "spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child."

<sup>28</sup> *County of Los Angeles v. Commission State Mandates, supra*, 110 Cal. App. 4th 1176.

<sup>29</sup> *Id.* at page 1194.

<sup>30</sup> *Ibid.*

Subparagraph (G)<sup>31</sup> of paragraph 9 of subdivision (c) of Penal Code section 13701 requires law enforcement to provide the following to victims at the scene:

A statement informing the victim of 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.

This requirement predates the test claim statute, and is therefore not a new program or higher level of service.

As to the remaining amendments, the test claim legislation imposes new requirements on law enforcement agencies. Prior law required law enforcement agencies to provide a victim card only to victims of sexual assault. The amendment to section 264.2, subdivision (a), requires law enforcement to provide victim cards to victims of an alleged battery or corporal injury on a spouse or other specified victim. Because this amendment expands the universe of victim card recipients, staff finds that Penal Code section 264.2, subdivision (a), as amended by Statutes 1998, chapter 698, constitutes a new program or higher level of service.

**Issue 5 - Does Penal Code section 264.2, subdivision (a), as amended, impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose increased costs mandated by the state.<sup>32</sup> Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

...any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

In the test claim, the claimants state that they would incur costs in excess of \$200 per annum,<sup>33</sup> which was the standard under Government Code section 17564, subdivision (a) at the time the claim was filed.<sup>34</sup> The Commission shall not find costs mandated by the state, as defined in section 17514, in certain instances (Gov. Code, § 17556). Staff finds that none of the section 17556 exceptions

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<sup>31</sup> The victim card provision is in subparagraph H. Although the statutory reference to subparagraph G appears to be in error, the statute is analyzed as written.

<sup>32</sup> *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835. *Department of Finance v. Commission on State Mandates, supra*, 30 Cal. 4th 727, 736. Government Code section 17514.

<sup>33</sup> The current standard is \$1000, amended by Statutes 2002, chapter 1124 effective September 30, 2002.

<sup>34</sup> Test Claim 98-TC-14, page 3. For the costs of printing the new cards, claimant estimated costs of \$8,000. However, the activity in this test claim is providing the cards to victims, not printing. Claimant did not specifically identify the costs for providing the victim cards.

apply. Therefore, staff finds there are costs mandated by the state within the meaning of Government Code sections 17514 and 17556.

### **Conclusion**

Based on the foregoing, staff finds that Penal Code section 264.2, subdivision (a) as amended by Statutes 1998, chapter 698, imposes a reimbursable state-mandated program upon counties and cities within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the activity of providing victim cards to victims of the following crimes:

- Battery against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship,<sup>35</sup> and
- Willful infliction of corporal injury on a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.<sup>36</sup>

Staff finds that all other statutes pled by claimant do not constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, except for Penal Code section 13701, on which staff makes no finding for reasons indicated in the analysis.

### **Recommendation**

Staff recommends that the Commission partially approve this test claim and adopt this analysis for the activities listed above.

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<sup>35</sup> Penal Code section 243, subdivision (e).

<sup>36</sup> Penal Code section 273.5.

Commission on State Mandates

Original List Date: 11/17/2003      Mailing Information: Draft Staff Analysis  
Last Updated:      Mailing List  
List Print Date: 11/26/2003  
Claim Number: 98-TC-14  
Issue: Domestic Violence Arrests and Victim Assistance

**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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October 15, 2004

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*And Affected Parties and State Agencies (See Enclosed Mailing List)*

Re: **Domestic Violence Arrests and Victim Assistance, 98-TC-14**  
County of Los Angeles, Claimant  
Penal Code Sections 264.2, 13701, and 13519  
Statutes 1998, Chapters 698, 701 & 702 (AB 1201, AB 2172, AB 2177)

Dear Mr. Kaye:

The revised draft staff analysis for this test claim is enclosed for your review and comment.

**Written Comments**

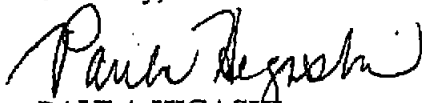
Any party or interested person may file written comments on the draft staff analysis by **November 5, 2004**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

**Hearing**

This test claim is set for hearing on **Thursday, December 9, 2004**, at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued approximately three weeks before the hearing. 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, subdivision (c)(2), of the Commission's regulations.

If you have any questions on the above, please contact Eric Feller, Commission Counsel, at (916) 323-8221.

Sincerely,

  
PAULA HIGASHI  
Executive Director

Enc. Revised Draft Staff Analysis

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ITEM \_\_

**TEST CLAIM  
REVISED DRAFT STAFF ANALYSIS**

Penal Code Sections 264.2, 13519 and 13701  
Statutes 1998, Chapters 698, 701 and 702

*Domestic Violence Arrests and Victim Assistance (98-TC-14)*

County of Los Angeles, Claimant

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**EXECUTIVE SUMMARY**

Staff will include the executive summary in the final staff analysis.

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## STAFF ANALYSIS

### Claimant

County of Los Angeles

### Chronology

- 05/21/99 Claimant files test claim with the Commission
- 06/28/99 Department of Finance (DOF) files comments on test claim with the Commission
- 01/11/01 Claimant requests an extension to file a reply to DOF's comments until 30 days after the California Supreme Court's decision in *Carmel Valley Fire Protection District v. State of California* (2001) 25 Cal. 4th 287 (*Carmel Valley II*)<sup>1</sup>
- 01/16/01 Commission grants claimant's request for an extension
- 04/05/01 The California Supreme Court issues the *Carmel Valley II* decision
- 05/03/01 Claimant files response to DOF's comments
- 04/09/02 Commission staff, claimant, and DOF stipulate to waive statutory deadlines on the test claim until judicial determination of *County of Los Angeles v. Commission on State Mandates*
- 07/28/03 Decision issued in *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176
- 11/26/03 Commission staff issues draft staff analysis
- 12/22/03 Claimant files an amendment to the test claim, which the Commission accepts as timely filed.
- 10/15/04 Commission issues revised draft staff analysis

### Background

#### A. Test Claim Legislation

In 1998, the Legislature enacted the test claim legislation to amend three Penal Code sections that address domestic violence.<sup>2</sup> Section 264.2<sup>3</sup> requires law enforcement officers who investigate and assist victims of specified sex crimes to, among other things, give the victim a Victim of Domestic Violence card (victim card). The statute was amended to add two crimes for which a victim card is given. The new groups to receive a card are victims of spousal battery, and victims of corporal injury on a spouse or other specified victim.

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<sup>1</sup> J. Tyler McCauley, County of Los Angeles, letter to Paula Higashi, January 11, 2001.

<sup>2</sup> Statutory references are to the Penal Code unless otherwise indicated.

<sup>3</sup> Section 264.2 was amended by Statutes 1998, chapter 698 (see §§ 1.5 & 4 of ch. 698).

Section 13519<sup>4</sup> requires the Commission on Peace Officer Standards and Training (POST) to implement a domestic violence basic training course and response guidelines with content as specified.<sup>5</sup> The test claim statute added subdivision (c)(5), "[t]he signs of domestic violence" to the course content and response guidelines. Section 13519, subdivision (e), also requires supplementary training as prescribed and certified by POST. Subdivision (g) requires nonsupervisory officers who are "assigned to patrol duties and would normally respond to domestic violence calls"<sup>6</sup> to complete, every two years, an updated domestic violence course that includes the specified content of the response guidelines and basic training course.

Section 13701,<sup>7</sup> which contains the policies and standards for officers' responses to domestic violence calls, was amended by Statutes 1998, chapter 702.<sup>8</sup> Chapter 702 amends the policies and standards for assisting domestic violence victims at the scene and the information given to the victim. Specifically, it adds to law enforcement's domestic violence policy: (1) transportation to a hospital and safe passage out of the victim's residence (to the victim assistance provision), and (2) contact information for the California victims' compensation program (to the notice given to the victim at the scene). It also adds two provisions to the content of the victim card: (1) phone numbers or county hotlines for local battered-women shelters, and (2) a statement that domestic violence or assault by a person known to the victim, including domestic violence or assault by the victim's spouse, is a crime.

#### B. Prior Related Commission Decisions

The Commission has issued five decisions on prior versions of these test claim statutes within the past 17 years, as follows:

##### **1. Penal Code section 13519 - Domestic Violence Training**

**Domestic Violence Training test claim:** In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course in how to handle domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376).<sup>9</sup> The Commission found that the test claim legislation: (1) does not require local agencies to implement a domestic violence training program and to pay the cost of the training; (2) does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours, so no additional costs are incurred by local agencies; and (3) does not require local agencies to provide domestic violence training.

<sup>4</sup> Section 13519 was amended by Statutes 1998, chapter 701.

<sup>5</sup> See <[http://www.post.ca.gov/training/tps\\_bureau/domestic\\_violence/domestic-violence-manual\\_wv.pdf](http://www.post.ca.gov/training/tps_bureau/domestic_violence/domestic-violence-manual_wv.pdf)> (as of September 24, 2004).

<sup>6</sup> Penal Code section 13519, subdivision (g).

<sup>7</sup> Section 13701 was amended by Statutes 1998, chapter 702 (§§ 3.3 & 6, subd. (e)).

<sup>8</sup> Claimant originally pled Statutes 1998, chapters 698 and 701, but amended the test claim to add Statutes 1998, chapter 702.

<sup>9</sup> Penal Code section 13519, subdivisions (b) and (c) (Stats. 1984, ch. 1609).

**Domestic Violence Training and Incident Reporting test claim:** In 1998, the Commission decided the *Domestic Violence Training and Incident Reporting* test claim (96-362-01), finding that Penal Code section 13519, subdivision (e)<sup>10</sup> (amended by Stats. 1995, ch. 965) is not a reimbursable state-mandated program. This statute requires local law enforcement officers below the rank of supervisor who normally respond to domestic violence calls to complete an updated domestic violence course every two years. The Commission found that because law enforcement officers are already required to take 24 hours of continuing education every two years, requiring the two-hour course as part of the 24-hour requirement does not impose increased costs mandated by the state.

The Commission's decision was upheld by the Second District Court of Appeal in *County of Los Angeles v. California Department of Finance*, holding that the statute did not impose a reimbursable state-mandated program because it merely "directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training."<sup>11</sup>

## 2. Penal Code section 13701 - Domestic Violence Response and Arrest Policies

**Domestic Violence test claim [response policies]:** In 1987, the Commission adopted the *Domestic Violence* Statement of Decision (CSM-4222), finding that the test claim statutes<sup>12</sup> are state-mandated programs that require local law enforcement agencies to: "develop, adopt and implement policies and standards for officer's responses to domestic violence calls; ... [maintain] records and recording systems; and ... [pro vide] specific written information ... to victims of domestic violence." The Commission's parameters and guidelines allowed reimbursement for, among other things: (1) development, adoption and implementation of a Domestic Violence Policy; (2) preparing a statement of information for incidents of domestic violence and giving it to victims (not including the victim card<sup>13</sup>); and (3) reporting to the Attorney General. Furnishing the victim with written information when responding to domestic violence incidents is also reimbursable.

Except for the 2003-2004 fiscal year, however, the Legislature has suspended these activities (the *Domestic Violence* mandate, Stats. 1984, ch. 1609) every year since the current test claim statute's operative date (January 1, 1999) based on authority in Government Code section 17581.<sup>14</sup>

<sup>10</sup> This is currently section 13519, subdivision (g) as amended by Statutes 1998, chapter 701.

<sup>11</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.

<sup>12</sup> Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 (Pen. Code, §§ 13700-13731).

<sup>13</sup> The victim card provision was added in 1991, which the Commission found reimbursable in the *Rape Victims Counseling Center Notice* test claim, CSM-4426 (1993), discussed below.

<sup>14</sup> Except for the 2003-2004 budget (Stats. 2003, ch. 157), Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 have been suspended by the Legislature pursuant to Government Code section 17581 every year since the operative date of the current test claim statutes (January 1, 1999) as follows: Statutes 1998, chapter 282, Item 9210-295-001, Schedule (8); Provision 2;

**Domestic Violence Arrest Policies and Standards test claim:** In 1997, the Commission adopted the *Domestic Violence Arrest Policies and Standards* Statement of Decision (96-362-02), finding that Penal Code section 13701, (as amended by Stats. 1995, ch. 246) constitutes a reimbursable state-mandated program for development, adoption, and implementation of domestic violence arrest procedures.<sup>15</sup> The Commission distinguished between the domestic violence *response* procedures in the suspended statute discussed above, and domestic violence *arrest* procedures in the amended test claim statute (now § 13701, subd. (b)), and concluded that the arrest procedures are not part of the Legislative suspension of the response policy.

### 3. Penal Code section 264.2 - Victim Card Distribution

**Rape Victims Counseling Center Notice test claim:** In 1993, the Commission adopted the *Rape Victims Counseling Center Notice* Statement of Decision (CSM-4426), finding that Statutes 1991, chapter 999 and Statutes 1992, chapter 224 (Pen. Code, § 264.2, subds. (b)(1) & (b)(2), & Pen. Code, § 13701) is a state-mandated program. The parameters and guidelines list the following reimbursable activities:

[R]equiring local law enforcement agencies to notify the local rape victim counseling center when the victim is transported to a hospital for examination and the victim approves of that notification; subject to the approval of the victim and upon request from the treating hospital, to verify whether the local rape victim counseling center has been notified; to revise the "Victims of Domestic Violence" card by adding information to assist rape victims, and to furnish a rape victim with a "Victims of Domestic Violence" card.

#### Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant requests reimbursement for the costs of providing victim cards to new groups of

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Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3. The Legislature did not suspend in 2003-2004, as of August 2, 2003, the date the 2003-2004 budget was enacted. It was suspended again in the 2004-2005 budget: Statutes 2004, chapter 208, Item 9210-295-0001, Schedule (3), Provision 5.

<sup>15</sup> This mandate (Stats. 1995, ch. 246) currently has \$1000 in the 2004-05 State Budget: Statutes 2004, chapter 208, Item 8120-102-0268, Schedule (1). The parameters and guidelines for this claim identify a uniform cost allowance as follows: A standard time of twenty-nine (29) minutes may be claimed to identify the primary aggressor in any domestic violence incident. The standard time of twenty-nine (29) minutes is broken down as follows: Seventeen (17) Minutes - Interview of both parties; Twelve (12) Minutes - Consideration of the factors listed [in the reimbursable activities]. The total cost will be determined by multiplying the number of reported responses x the average productive hourly rate, including applicable indirect costs as specified in section V., paragraph B, herein, x .48 (29 minutes divided by 60 minutes).

victims, giving additional written information to victims, giving victims additional emergency assistance, training officers, updating policies and procedures and modifying record-keeping systems.

Claimant amended the test claim in December 2003 to add Statutes 1998, chapter 702, but pled the same activities as in the original test claim. The Commission accepted the amendment as filed in a timely manner.

### State Agency Position

The Department of Finance (DOF) comments regarding Statutes 1998, chapter 698, that "these provisions would appear to result in a reimbursable state-mandated local program ..." (Chapter 698 added two new groups of victims to those who receive a victim card). But DOF notes that the Legislature has suspended the mandates imposed by Statutes 1984, chapter 1609 relating to law enforcement responses to domestic violence, and argues that this includes the provisions of section 13701 requiring distribution of a victim card. According to DOF, "until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at issue in the present matter would similarly not be reimbursable."

Regarding Statutes 1998, chapter 701, DOF states that requiring the domestic violence training course for law enforcement officers to include techniques for recognizing the signs of domestic violence would be satisfied by POST. As to the rest of chapter 701 (responding to domestic violence calls to include emergency assistance to the victim's children, transportation of the domestic violence victim and children to a hospital for treatment if necessary, and police assistance in safe passage out of the victim's residence), DOF believes "that these provisions may result in a reimbursable state-mandated local program." However, based on the Legislature's suspension of Statutes 1984, chapter 1609, DOF believes "any provision of Chapter 701/98 at issue ... would not be reimbursable."

No other state agencies commented on the test claim, nor on the amendment.

### Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>16</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>17</sup> "Its purpose

<sup>16</sup> Article XIII B, section 6 provides:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>18</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>19</sup> In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.<sup>20</sup>

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>21</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>22</sup> A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."<sup>23</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>24</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>25</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an

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<sup>17</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>18</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>19</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>20</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, (*San Diego Unified School Dist.*); *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>21</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

<sup>22</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>23</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>24</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

<sup>25</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

"equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>26</sup>

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6?
- Does the test claim statute impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?
- Does the Commission have jurisdiction over activities decided in a prior test claim?

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

**A. Do the test claim statutes impose state-mandated activities on local agencies?**

Domestic violence arrest policy (§ 13701, subd. (b)): Statutes 1998, chapter 702 amended section 13701, subdivision (b),<sup>27</sup> by adding orders issued by other states, tribes or territories to the list of enforceable protective orders in the domestic violence arrest policy.

The test claim statute amended the preexisting law as follows:

These [domestic violence arrest] policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated.

Local law enforcement agencies must now amend their domestic violence arrest policies to include these orders issued by other jurisdictions. Staff finds this amendment is not a state mandate because it is incidental to a requirement of federal law.

The legislative history of this amendment clearly indicates that it was enacted to bring California into compliance with the federal Violence Against Women Act (18 U.S.C. § 2265), which requires any protective order issued by a court of one state or Indian tribe to be accorded full faith and

<sup>26</sup> *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>27</sup> This subdivision was added by Statutes 1995, chapter 246, which the Commission found is reimbursable in the *Domestic Violence Arrest Policies and Standards*, 96-362-02 (1996) test claim.

credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or Indian tribe.<sup>28</sup>

In *San Diego Unified School District v. Commission on State Mandates*,<sup>29</sup> the California Supreme Court considered whether the pupil expulsion hearing procedures of Education Code section 48918 are reimbursable. The court held that this Education Code provision was adopted to implement a federal due process mandate, so the hearing costs were not reimbursable.<sup>30</sup> In doing so, the court espoused the following rule.

[F]or purposes of ruling upon a request for reimbursement, challenged state rules or procedures [i.e., test claim statutes] that are intended to implement an applicable federal law -- and whose costs are, in context, de minimis -- should be treated as part and parcel of the underlying federal mandate.<sup>31</sup>

The reasoning of the *San Diego Unified* case applies to this claim because the amendment in the test claim statute was intended to implement a federal law (the Violence Against Women Act) and contains a de minimis, one-time cost (inserting a phrase in the domestic violence arrest policy).

Thus, staff finds that the amendment to section 13701, subdivision (b), in Statutes 1998, chapter 702 does not impose a state-mandated activity on local agencies because it is "part and parcel of the underlying federal mandate."<sup>32</sup>

**Excluding the support person (Pen. Code, § 264.2, subd. (b)(4)):** Section 1.5 of Statutes 1998, chapter 698 adds subdivision (b)(4) to section 264.2 regarding sex-crime victims:

A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

Preexisting law gives the victim of specified sex crimes<sup>33</sup> the right to have a support person present during any medical evidentiary or physical examination.

Staff finds that subdivision (b)(4) does not impose a state-mandated activity on local agencies. The statute's use of the word "may" makes this activity at the officer's discretion.<sup>34</sup> Therefore, Penal Code section 264.2, subdivision (b)(4), is not subject to article XIII B, section 6.<sup>35</sup>

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<sup>28</sup> Senate Judiciary Committee analysis, Assembly Bill No. 2177 (1997-1998 Reg. Sess.) as amended March 26, 1998, page 1.

<sup>29</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

<sup>30</sup> *Id.* at page 888.

<sup>31</sup> *Id.* at page 890.

<sup>32</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 890.

<sup>33</sup> These include rape (§ 261) statutory rape (§ 261.5), spousal rape (§ 262), sodomy (§ 286), oral copulation (§ 288a), and forcible acts of sexual penetration (§ 289).



**Basic training (§ 13519, subd. (c)(5)):** Section 13519 requires POST to implement a course for training law enforcement officers in handling domestic violence complaints and developing guidelines for response to domestic violence. Section 1 of the test claim statute (Stats. 1998, ch. 701) amended subdivision (c)(5), to add "signs of domestic violence" to the list of basic training procedures and techniques.

In 1991, the Commission, in the *Domestic Violence Training* decision, CSM-4376 (1991), found that the basic training procedures and techniques of section 13519, subdivision (c), are not mandatory because the test claim legislation: (1) does not require local agencies to implement a domestic violence training program and to pay the cost of the training; (2) does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours, so no additional costs are incurred by local agencies; and (3) does not require local agencies to provide domestic violence training.<sup>36</sup> The same analysis applies to this test claim.

Staff finds that the statutory amendment pled by claimant does not mandate basic training activities on local law enforcement agencies because the requirement to implement the domestic violence course is on POST, a state agency. Moreover, the requirement to complete the basic training course on domestic violence is mandated only on the individual seeking peace officer status.

Subdivision (c) of section 13519 states that "the course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the [domestic violence] procedures and techniques described below: . . ." The test claim statute does not mandate local agencies to provide the course of basic training, nor does it specify who is required to provide it.

In addition, there are no provisions in other statutes or regulations issued by POST that require local agencies to provide basic training to recruits. Since 1959, section 13510 and following have required POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing recruitment of new local law enforcement officers.<sup>37</sup> Recruits may obtain the required training at any institution approved by POST.<sup>38</sup> Moreover, "each applicant for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency . . . shall be required to submit written certification from the Department of Justice . . . that the applicant has no criminal history background. . . ."<sup>39</sup>

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<sup>34</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 742; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

<sup>35</sup> Alternatively, because claimant pled no activities related to subdivision (b)(4), there is no evidence in the record that excluding the support person imposes costs mandated by the state.

<sup>36</sup> This finding is consistent with the Commission's decision in *Law Enforcement Racial and Cultural Diversity Training* 97-TC-06 (2000).

<sup>37</sup> These standards can be found in Title 11 of the California Code of Regulations.

<sup>38</sup> Penal Code section 13511, subdivision (a).

<sup>39</sup> Penal Code section 13511.5.

Since 1971, section 832 has required "every person described in this chapter as a peace officer" to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.<sup>40</sup> Subdivision (e)(1) requires any person completing the basic training course "who does not become employed as a peace officer" within three years to pass the basic training examination. POST may charge a fee for the basic training examination to each "applicant" who is not sponsored or employed by a local law enforcement agency.<sup>41</sup>

Because the test claim statute does not mandate local agencies to incur costs to provide basic training, including the domestic violence course, staff finds that section 13519 (as amended by Stats. 1998, ch. 701), as it applies to basic training, does not impose a state-mandated activity on local agencies.

**Continuing training (§ 13519, subd. (c)(5)):** As discussed above, the test claim statute (Stats. 1998, ch. 701) amended subdivision (c)(5), to add "signs of domestic violence" to the list of basic training procedures and techniques. Subdivision (g), the continuing training provision, requires specified peace officers to take the domestic violence course every two years "that is developed according to the standards and guidelines developed pursuant to subdivision (d)." Subdivision (d) states: "The guidelines developed by the commission [POST] shall also incorporate the foregoing factors." These foregoing factors are listed in subdivision (c), the subdivision that was amended by the test claim statute to include the "signs of domestic violence" to the course content. Thus, the test claim amendment to subdivision (c) affects continuing training also.

The Commission found that the domestic violence continuing education requirement of section 13519 is not a reimbursable mandate in the *Domestic Violence Training and Incident Reporting* decision, 96-362-01 (1996). This test claim was litigated and the decision upheld by the court in *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176. But the court stated that POST certification for continuing education "is, for all practical purposes, not a 'voluntary' program and therefore the County must, in order to comply with section 13519, add domestic violence training to its curriculum." (*Id.* at 1194).

For this reason, staff finds that the amendment to section 13519, subdivision (c)(5), as applied to continuing training, is mandated by the state; and is therefore further analyzed under Issue 2 below.

**Response policy, victim assistance & information (§ 13701, subd. (c)(7) & (c)(9)(D)):** The test claim statute added the following underlined provisions to section 13701's domestic violence response policy:

- (subd. (c)(7)): Include standards for "Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence."

<sup>40</sup> See also POST's regulation, California Code of Regulations, title 11, section 1005, subdivision (a)(9).

<sup>41</sup> Penal Code section 832, subdivision (g).

- (subd. (c)(9)(D)): Include in written information given to the victim "A statement that, 'For information about the California victims' compensation program, you may contact 1-800-777-9229.'"

Before the test claim statute, the domestic violence response policy was not required to include the underlined provisions above.

Therefore, adding these statements to the domestic violence response policy is required based on the plain language of section 13701, subdivision (a), which states: "Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls . . ." <sup>42</sup> [Emphasis added.]

However, the Legislature has suspended the underlying requirement to develop, adopt, and implement policies and standards for officers' responses to domestic violence calls. As discussed in the Background, the Commission approved the *Domestic Violence* test claim (CSM-4222) in 1987. Pursuant to the parameters and guidelines, local agencies were eligible to receive reimbursement for the following activities: (1) developing, adopting and implementing a Domestic Violence Policy; (2) preparing a statement of information for victims of incidents of domestic violence; (3) preparing a statement of information for victims of domestic violence; (4) reporting to the Attorney General. The Commission also found that furnishing the victim with written information when responding to domestic violence incidents, as well as report writing and other specified costs are reimbursable. Except for one year, the Legislature has suspended Statutes 1984, chapter 1609<sup>43</sup> in the Budget Act for fiscal years 1992-1993 through 2004-2005.<sup>44</sup> Although the budget acts do not mention Statutes 1985, chapter 668, (part of the *Domestic Violence* decision, CSM-4222), staff finds that the Legislature suspended it also. As specified in the State Controller's Office Claiming Instructions for CSM-4222, the entire domestic violence program as outlined in the parameters and guidelines was suspended.<sup>45</sup>

<sup>42</sup> This finding is consistent with the Commission's decision in the *Domestic Violence* (CSM-4222).

<sup>43</sup> Except for the 2003-2004 budget, Statutes 1984, chapter 1609 has been suspended by the Legislature since the operative date of the current test claim statutes (January 1, 1999), as follows: Statutes 1998, chapter 282, Item 9210-295-001, Schedule (8), Provision 2; Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3.

<sup>44</sup> The Legislature did not suspend the mandate in 2003-2004. However, chapter 1609 was suspended again in the 2004-2005 budget act (Stats. 2004, ch. 208): Item 9210-295-0001, Schedule (3), Provision 5.

<sup>45</sup> State Controller's Office, County Mandated Cost Manual, Revised 9/94, page 1.

Thus, the issue here is what effect the suspension of *Domestic Violence* CSM-4222 (§ 13701, Stats. 1984, ch. 1609, Stats. 1985, ch. 668) has on the analysis of the test claim amendments to Penal Code section 13701.

DOF comments that the Legislature has suspended the mandates imposed by Statutes 1984, chapter 1609 relating to law enforcement responses to domestic violence. According to DOF, "until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at issue in the present matter would similarly not be reimbursable."

Claimant disagrees, arguing that the suspension of Statutes 1984, chapter 1609 does not include the victim card provisions.<sup>46</sup> According to claimant, because chapter 1609's 'optional' requirements are different from the mandated requirements in the test claim legislation, chapter 1609 is not relevant as to whether the test claim is reimbursable.

For reasons stated below, staff finds that for years in which the Legislature suspends the mandate to develop, adopt, and implement a domestic violence response policy, adding the provisions in (c)(7) and (c)(9)(D) to the response policy is voluntary and not mandated by the state. But for years when the Legislature does not suspend the mandate to develop, adopt, and implement a domestic violence response policy, the activity of adding the provisions in (c)(7) and (c)(9)(D) to the response policy is mandated by the state.

Government Code section 17581, subdivision (a), governs mandate suspension. It makes complying with test claim statutes optional for local agencies on two conditions. First, the Commission (or the Legislature or any court) must find that the test claim statute, or any portion thereof, is a reimbursable state mandate. Second, the Legislature must specify in the budget that the test claim statute is not reimbursable for the fiscal year (by appropriating zero dollars for the program). Government Code section 17581, subdivision (a), states the following:

No 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 all of the following apply:

- (1) The statute or executive order, or portion thereof, has 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 pursuant to Section 6 of Article XIII B of the California Constitution.
- (2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being

<sup>46</sup> Claimant cited the victim card provisions of Penal Code section 13701, but the arguments also apply to the victim card provisions of Penal Code 264.2. It appears claimant's comments implicitly refer to the following prior Commission decisions: (1) *Domestic Violence*, CSM-4222 (1987) [Stats. 1984, ch. 1609 & Stats. 1985, ch. 668]; and (2) *Rape Victims Counseling Center Notice*, CSM-4426 (1993) [Stats. 1991, ch. 999 & Stats. 1992, ch. 224].

one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursement.

The activity required by the test claim statute to amend the original domestic violence response policy is included within the suspended program. The test claim statute requires adding transportation to "a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence" to the emergency assistance provision of the domestic violence response policy. It also requires adding victim's compensation program contact information to the domestic violence response policy. The underlying suspended program encompasses these emergency assistance and victim information test claim amendments.

Since the underlying domestic violence response policy is voluntary in years that it is suspended by the Legislature, the local agencies' obligation to amend the response policy is also voluntary in years the suspension is in effect. The California Supreme Court, in *Kern High School District*, found that "if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate."<sup>47</sup> The court further stated, on page 731 of the decision, that:

*[We reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, without regard to whether claimant's participation in the underlying program is voluntary or compelled. [Emphasis added.]*

The Commission is required to follow the holding of the California Supreme Court in interpreting state mandate issues.

Therefore, for fiscal years when the *Domestic Violence, CSM-4222* (1987) program is suspended, staff finds that adding the emergency assistance and victim information to the domestic violence response policy, as required by Penal Code section 13701, subdivision (c)(7) and (c)(9)(D), is part of the suspended mandate, CSM-4222, and is optional. For fiscal years when the Legislature does not suspend the program, staff finds that adding the emergency assistance and victim information to the response policy is mandated by the state. Thus, the analysis continues under Issue 2 as to whether the activities in Penal Code section 13701, subdivision (c)(7) and (c)(9)(D), constitute a new program or higher level of service in years that the Legislature does not suspend the underlying domestic violence response policy program (CSM-4222).

<sup>47</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th at page 743.

**Response policy, victim card (§ 13701 subd. (c)(9)(H)):** The test claim statute requires local agencies to add the following to the victim card provision in the domestic violence response policy: "(i) The names and phone number of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837 ... [¶]...[¶] (iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime."

The victim card provision was not part of the suspended domestic violence response policy mandate because it was added to section 13701 in 1991, and was the subject of a prior test claim: *Rape Victims Counseling Center Notice* (CSM-4426) that was approved by the Commission. In it, the Commission found that revising the victim card, and furnishing it to victims, is reimbursable. The Commission's decision in *Rape Victims Counseling Center Notice* has not been suspended by the Legislature.

Therefore, staff finds that adding the following to the domestic violence response policy is mandated by the state: (1) phone numbers of or county hotlines for local battered women shelters and (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

**Providing the victim card (§ 264.2, subd. (a):** Section 1.5 of Statutes 1998, chapter 698 amended subdivision (a) of section 264.2 to require law enforcement officers to give victims of specified sex crimes a Victim of Domestic Violence Card, or victim card. The test claim statute adds victims of two crimes--alleged battery or corporal injury on a spouse or other specified victim--to the list of those for which a victim card is provided. Statutes 1998, chapter 698 amended section 264.2, subdivision (a) as follows (added text bold underlined):

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G)<sup>48</sup> of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

Penal Code section 243, subdivision (e), involves battery against: "a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship." Penal Code section 273.5 involves willful infliction of corporal injury on a "spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child."

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<sup>48</sup> The reference to subparagraph (G) of paragraph 9 of subdivision (c) of Penal Code section 13701 is in error, as (G) does not refer to the victim card. The correct reference to victim cards is subparagraph (H). Subparagraph (G) requires providing victims with a statement about the right to file civil suit for certain losses and expenses. This subparagraph predates the test claim statutes and is not analyzed herein.

Staff finds that Penal Code section 264.2, subdivision (a), as amended by the test claim statute imposes a state-mandated activity on local agencies to provide two new groups of victims of specified crimes with a victim card.

**Summary:** On the issue of whether or not the test claim statutes impose a state-mandate activity on local agencies, staff finds the following:

- 13701 (d): DV arrest policy • No. A de minimis activity intended to implement a federal law.
- 264.2 (b)(4): Excluding the support person • No. A discretionary activity.
- 13519 (c)(5): Basic training • No. Requirement is on POST and on person seeking peace officer status.
- 13519 (c)(5): Continuing training • Yes, for all practical purposes not voluntary. *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.
- 13701 (c)(7) & (c)(9)(D): response policy, victim assistance and information • Yes, adding statements to the response policy is mandatory in years in which the Legislature has not suspended the *Domestic Violence* mandate.
- 13701 (c)(9)(H): Response policy, victim card • Yes, amending the victim card provision in the response policy is mandatory.
- 264.2 (a): Providing the victim card • Yes, providing victim cards is mandatory.

**B. Does the test claim legislation qualify as a program under article XIII B, section 6?**

For the remaining test claim statutes (§§ 13519, subd. (c)(5), & 13701, subd. (c), & 264.2, subd. (a), as amended by the test claim statutes) to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>49</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>50</sup>

The test claim statutes pertain to assisting and distributing information to domestic violence victims and domestic violence training for law enforcement. These activities are peculiarly governmental public safety functions administered by local law enforcement agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements on local agencies that do not

<sup>49</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>50</sup> *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

apply generally to all residents and entities of the state. Therefore, staff finds the test claim statutes constitute a "program" within the meaning of article XIII B, section 6.

**Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?**

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.<sup>51</sup>

**Continuing training (§ 13519, subd. (c)(5)):** Staff found, under issue 1 above, that local agencies are required to include the "signs of domestic violence" in the course content for the domestic violence continuing education training course for "each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence."

In the *Domestic Violence Training and Incident Reporting* Statement of Decision (96-362-01), the Commission found that the domestic violence continuing education course required by Penal Code section 13519, subdivision (e)<sup>52</sup> (amended by Stats. 1995, ch. 965) is not a reimbursable state-mandated program. The Commission determined that because non-supervisory patrol officers are already required to take 24 hours of continuing training every two years,<sup>53</sup> requiring the two-hour domestic violence course<sup>54</sup> within the existing 24-hour requirement does not impose increased costs mandated by the state.

The California Court of Appeal upheld the Commission's decision in *County of Los Angeles v. Commission on State Mandates*.<sup>55</sup> Since the court's holding was based on the 1995 version of section 13519, the issue is whether the test claim amendment could alter that conclusion.

The *County of Los Angeles* court stated,

[L]ocal law enforcement agencies may choose from a menu of course offerings to fulfill the 24-hour requirement. ... Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. ... However, merely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources... by mandating the inclusion of domestic violence training. ... [T]he state is requiring certain courses to be placed within an already

<sup>51</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>52</sup> This is currently section 13519, subdivision (g) as amended by Statutes 1998, chapter 701.

<sup>53</sup> California Code of Regulations, title 11, section 1005, subdivision (d)(1).

<sup>54</sup> California Code of Regulations, title 11, section 1081, subdivision (a)(25).

<sup>55</sup> *County of Los Angeles v. Commission State Mandates*, *supra*, 110 Cal. App. 4th 1176.



existing framework of training. This loss of "flexibility" does not... require the County to expend funds that previously had been expended on the POST program by the State.<sup>56</sup>

Thus, the court concluded that the statute did not mandate a higher level of service.<sup>57</sup>

In adding "the signs of domestic violence" to the domestic violence continuing training content, the amendment to section 13519 is not a higher level of service because it does not alter the factors upon which the court relied, nor does it increase the existing framework of training. Local law enforcement's requirement to take the two-hour domestic violence course, and to take 24-hours of training every two years, remain the same. The test claim statute does not increase the hourly requirement for continuing training. Therefore, staff finds that the test claim amendment to section 13519, subdivision (c)(5), as it relates to continuing training (amended by Stats. 1998, ch. 701) does not constitute a new program or higher level of service.

**Response policy, victim assistance (§ 13701 subd. (c)(7)):** Statutes 1998, chapter 702 amended section 13701, subdivision (c)(7), to add the one-time activity of amending law enforcement's policies and standards for officers' responses to domestic violence calls. Specifically, chapter 702 added to the policy, "transportation to a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence."<sup>58</sup> Although this activity is currently voluntary because it is part of the legislatively suspended program, as discussed above, further analysis is necessary for years when the underlying program is not suspended.

Preexisting law did not require law enforcement's domestic violence response policy to include "transportation to a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence." Therefore, staff finds that adding these provisions to the domestic violence response policy is a new program or higher level of service only in years when the Legislature does not suspend the underlying domestic violence response policy program (CSM 4222).

**Response policy, victim information (§ 13701 subd. (c)(9)(D)):** The test claim statute (Stats. 1998, ch. 702, § 3.3) amended the domestic violence response policy by requiring local agencies to include in the response policy the following:

- Include in written information given to the victim "A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

Although this activity is currently voluntary because it is part of the legislatively suspended program, as discussed above, further analysis is necessary for years when the underlying program is not suspended.

Preexisting law required the policy to include giving victims other assorted information, including information about shelters, community services, restraint of the alleged perpetrator, and legal

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<sup>56</sup> *Id.* at page 1194.

<sup>57</sup> *Id.* at page 1193.

<sup>58</sup> Penal Code section 13701, subdivision (c)(7).

information. Under prior law, however, the policy was not required to include giving the victim information about the California victims' compensation program.

Therefore, staff finds that the one-time activity of inserting this contact information for the victims' compensation program, as specified in the test claim statute, into the domestic violence response policy, is a new program or higher level of service only in years when the Legislature does not suspend the underlying program.

**Response policy, victim card (§ 13701 subd. (c)(9)(H)):** The test claim statute amended subdivision (c)(9)(H) of section 13701, which contains the policy's description of the victim card's contents. It was amended to add information to the card, as follows:

(i) The names and phone number of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837

[§]...[§]

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime."

Preexisting law required the victim card to include the following specified information:

(i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

Prior law did not require the domestic violence response policy's description of the victim card to include information about battered women shelters or a statement regarding the criminality of domestic violence or assault by a spouse. Since the test claim statute altered the victim card to add this information, new printing would be required:

Therefore, staff finds that the one-time activities of inserting information about battered women shelters and a statement regarding the criminality of domestic violence or assault by a person known to the victim or a spouse, as specified in the test claim statute, into the domestic violence response policy, and printing victim cards to include the new information, is a new program or higher level of service.<sup>39</sup>

**Providing the victim card (§ 264.2, subd. (a)):** Section 1.5 of Statutes 1998, chapter 698 amended subdivision (a) of section 264.2, which specifies the types of victims who must be provided with a victim card.

<sup>39</sup> Because the Legislature has not suspended the Commission's *Rape Victims Counseling Center Notice* decision, CSM-4426 (1993), suspension is not an issue for victim cards.

The test claim statute adds victims of two crimes--alleged battery or corporal injury on a spouse or other specified victim--to the list of those for which a victim card is provided. Statutes 1998, chapter 698 amended section 264.2, subdivision (a) as follows (added text bold underlined):

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, ~~273.5~~, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G)<sup>60</sup> of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

Penal Code section 243, subdivision (e), involves battery against "a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship." Penal Code section 273.5 involves willful infliction of corporal injury on a "spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child."

Prior law required law enforcement agencies to provide a victim card to victims of the following crimes: rape, sex with a minor, spousal rape, sodomy, oral copulation, and penetration by a foreign object. The amendment to section 264.2, subdivision (a), requires law enforcement to provide victim cards to victims of an alleged battery or corporal injury on a spouse or other specified victim. Because this amendment expands the universe of victim card recipients to include victims of two new crimes -- spousal battery and willful infliction of corporal injury -- staff finds that section 264.2, subdivision (a), as amended by Statutes 1998, chapter 698 constitutes a new program or higher level of service.

**Summary:** As to whether or not the test claim statutes are a new program or higher level of service subject to article XIII B, section 6, staff finds the following:

- 13519 (c)(5): Continuing training
  - No, not a new program or higher level of service. *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App. 4th 1176, 1194.
- 13701 (c)(7): Response policy, victim assistance
  - Yes, the one-time activity of adding statements to the response policy is a new program or higher level of service if the Legislature has not suspended the *Domestic Violence* mandate.
- 13701 (c)(9)(D): Response policy, victim information
  - Yes, the one-time activity of adding contact information to the response policy is a new program or higher level of service if the Legislature has not suspended the *Domestic Violence* mandate.

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<sup>60</sup> The reference to subparagraph (G) of paragraph 9 of subdivision (c) of Penal Code section 13701 is in error, as (G) does not refer to the victim card. The correct reference to victim cards is subparagraph (H). Subparagraph (G) requires providing victims with a statement about the right to file civil suit for certain losses and expenses. This subparagraph regarding the victim's right to file civil suit predates the test claim statutes and is not analyzed herein.

- 13701 (c)(9)(H): Response policy, victim card • Yes, the one-time activities of amending the victim card provision in the response policy and reprinting cards is a new program or higher level of service.
- 264.2 (a): Providing the victim card • Yes, giving out victim cards is a new program or higher level of service.

**Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?**

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose increased costs mandated by the state.<sup>61</sup> Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

[A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

**Response policy, victim information (§ 13701, subds. (c)(7) & (c)(9)(D)):** As discussed above, for years in which "Statutes 1984, chapter 1609"<sup>62</sup> is not suspended in the Budget Act, the one-time activity of adding the following information to the domestic violence response policy is a mandated new program or higher level of service:

- Victim assistance provisions: "transportation to a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence." (§ 13701, subd. (c)(7).)
- Victim notice: "A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229." (§ 13701, subd. (c)(9)(D).)

Except for fiscal year 2003-2004, the underlying program has been suspended by the Legislature since the effective date of the test claim statute. According to a declaration provided by the claimant, the claimant incurred costs for this one-time activity between January 1, 1999, and June 30, 1999, when the suspension was in effect and the state did not mandate the activities.<sup>63</sup> Therefore, there is no evidence in the record that the activity of adding victim assistance information and information about the victims compensation program, as required by Penal Code

<sup>61</sup> *Kern High School Dist.*, *supra*, 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>62</sup> The suspended budget provision states "Statutes 1984, chapter 1609." As discussed above, this refers to the Commission's decision in the *Domestic Violence* test claim CSM-4222 (1991).

<sup>63</sup> Declaration of Martha Zavala, May 7, 1999, page 4, Schedule A

section 13701, subdivisions (c)(7) & (c)(9)(D), to the domestic violence response policy resulted in "costs mandated by the state," within the meaning of Government Code section 17514, to the claimant or any other local agency. Therefore, reimbursement is not required for Penal Code section 13701, subdivisions (c)(7) & (c)(9)(D).

**Response policy, victim card, and providing the victim card (§§ 13701, subd. (c)(9)(H), 264.2, subd. (a)):** As indicated above, staff finds the following activities constitute mandated new programs or higher levels of service:

- The one-time activities of amending the victim card provision of the domestic violence response policy to include information about battered women shelters and a statement regarding the criminality of domestic violence or assault by a spouse, and printing victim cards to include the new information, as specified in Penal Code section 13701, subdivision (c)(9)(H);
- Providing victim cards to victims of an alleged spousal battery and willful infliction of corporal injury, as required by Penal Code section 264.2, subdivision (a).

In the test claim, the claimant states that it would incur increased costs in excess of \$200 per annum,<sup>64</sup> which was the standard under Government Code section 17564, subdivision (a), at the time the claim was filed. For the costs of printing the new cards, claimant estimated costs of \$8,000.<sup>65</sup> There is no evidence in the record to dispute these costs.

Furthermore, none of the exceptions in Government Code section 17556 apply to this claim.

Therefore, staff finds there are costs mandated by the state within the meaning of Government Code sections 17514 for these activities.

**Issue 4: Does the Commission have jurisdiction over activities decided in a prior test claim?**

**Providing victim assistance & information (§ 13701, subd. (c)(7)):** Claimant requests reimbursement to implement portions of the domestic violence response policy. For example, the claimant requests reimbursement for transporting victims to a hospital for treatment and assisting victims out of the residence. Staff finds that the Commission already decided these "emergency assistance" activities in the *Domestic Violence* parameters and guidelines, CSM-4222 (1987), and therefore has no jurisdiction over this activity for purposes of this claim.<sup>66</sup>

The statutory scheme for mandate determinations under article XIII B, section 6 establishes finality for decisions adopted by the Commission. The Commission has no continuing jurisdiction over its decisions, including the 1987 *Domestic Violence* decision. Until 1999, the Commission did not have

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<sup>64</sup> The current standard is \$1000, amended by Statutes 2002, chapter 1124, effective September 30, 2002.

<sup>65</sup> Test Claim 98-TC-14, page 3.

<sup>66</sup> The decision of the quasi-judicial administrative agency, if not challenged within the applicable statute of limitations, binds the parties on the issues litigated. *Hollywood Circle, Inc. v. Department of Alcoholic Beverage* (1961) 55 Cal.2d 728, 731-733.

any statutory authority to reconsider test claim decisions. In 1999, Government Code section 17559 was amended to authorize the Commission to order reconsideration, on petition of a party, within 30 days after the statement of decision is issued. (Stats. 1999, ch. 643.)

This finality also applies to parameters and guidelines. Once the parameters and guidelines are adopted, the State Controller's Office has 60 days to issue claiming instructions to assist local agencies in claiming costs,<sup>67</sup> who then have 120 days from the date of the claiming instructions to file their reimbursement claims with the State Controller's Office for initial fiscal year costs.<sup>68</sup> Although the parties may request amendments to the parameters and guidelines, the request must be filed with the Commission before the deadline for initial claims to apply the proposed amendment retroactively back to all years eligible for reimbursement.<sup>69</sup> Requests to amend parameters and guidelines filed after the deadline for initial claims must be submitted on or before January 15 following a fiscal year in order to establish eligibility for that fiscal year.<sup>70</sup> Thus, Commission adopted amendments may apply to the prior fiscal year if filed before January 15 following a fiscal year. A request to amend the parameters and guidelines for *Domestic Violence* could not be retroactive to the initial reimbursement period of the original decision unless it were filed before the due date for the initial reimbursement claims.

The test claim statute in this case, Penal Code section 13701, subdivision (c)(7), added the following underlined provisions to section 13701's domestic violence response policy:

Include standards for "Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence."

In years when the underlying *Domestic Violence* program is not suspended, claimants are eligible to receive reimbursement for, among other things: '(1) development, adoption and implementation of a Domestic Violence Policy.' The emergency assistance to victims, medical care, and transportation to a shelter were all included in the original test claim statute's response policy. Penal Code section 13701 originally included "[e]mergency assistance to victims, such as ...." [Emphasis added.] The phrase, "such as" means, "for example" or "of a kind specified."<sup>71</sup> Thus, the test claim statute in this case merely adds further examples of assistance after the "such as." These amendments were called "clarifying" by the Assembly Public Safety Committee.<sup>72</sup> Since

<sup>67</sup> Government Code, section 17558, subdivision (b).

<sup>68</sup> Government Code, section 17561, subdivision (d)(1).

<sup>69</sup> Government Code, section 17557; California Code of Regulations, title 2, section 1183.2, subdivision (b).

<sup>70</sup> Government Code, section 17557; California Code of Regulations, title 2, section 1183.2, subdivision (c).

<sup>71</sup> See <<http://dictionary.reference.com/search?q=such%20as>> as of October 6, 2004.

<sup>72</sup> Assembly Public Safety Committee, Analysis of Assembly Bill No. 2172 (1997-98 Reg. Sess.) as introduced. Originally, the bill referred to "guaranteeing" safe passage away from the

the amendments are clarifying only, they do not increase the level of service required of local agencies.<sup>73</sup>

Thus, because the activities of emergency assistance, medical care, and transportation were already decided in the original *Domestic Violence* statement of decision and parameters and guidelines, the Commission has no jurisdiction over these activities in this claim.

Claimant also requested reimbursement for assisting children out of the residence, but this activity is not in the enacted version of the test claim statute that amended section 13701 (Stats. 1998, ch. 702, §§ 3.3 & 6). The last chaptered bill is assigned the higher chapter number,<sup>74</sup> which becomes law when legislative bills are double or triple-joined, as they were in this case.<sup>75</sup> Neither chapters 698 nor 701, which include the provision regarding assisting children, amended or became law as to Penal Code section 13701.<sup>76</sup> So staff finds that the test claim statute does not mandate assisting children out of the residence.

### Conclusion:

Staff finds that section 13701, subdivision (c)(9)(D) and (H) (as amended by Stats. 1998, ch. 702), and section 264.2, subdivision (a) (as amended by Stats. 1998, ch. 698), impose a reimbursable state-mandated program on local agencies within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

Staff finds that the following activities are reimbursable:

- Providing victim cards to victims of the following crimes: (1) Penal Code section 243, subdivision (e), battery against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or

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residence, but was later changed to "assisting." This bill was later double joined to Assembly Bill No. 2177 (Stats. 1998, ch. 702), which was enacted as to section 13701.

<sup>73</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 877.

<sup>74</sup> See Government Code sections 9510 and 9605.

<sup>75</sup> Double-joined bills are two bills that propose to amend the same code section, drafted so that the amended bill does not override the provisions of the bill that affects the same section. In this case, section 6, subdivision (c) of Statutes 1998, chapter 702 states:

(c) Section 3.3 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2172. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201, [chapter 698] and AB 2172, [chapter 701] in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative. [Emphasis added.]

<sup>76</sup> Statutes 1998, chapter 698, sections 2.1, 2.3 and 5. Statutes 1998, chapter 701, sections 2, 2.1, 2.2, 2.3 & 3.

engagement relationship;<sup>77</sup> and (2) Penal Code section 273.5, willful infliction of corporal injury on a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.<sup>78</sup> (§ 264.2, subd. (a)).

- The one-time cost of printing victim cards to add the following new information: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).
- The one-time cost of adding to the domestic violence response policy two new crimes (§§ 243, subd. (e), & 273.5) to those for which a victim card is given out (§ 13701, subd. (c)(9)(H)).
- The one-time cost of adding the following to the description of the victim card in the domestic violence response policy: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).

Staff also finds that all other amendments to the test claim statutes, as discussed above, do not constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

#### **Recommendation**

Staff recommends that the Commission partially approve this test claim and adopt this analysis.

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<sup>77</sup> Penal Code section 243, subdivision (e).

<sup>78</sup> Penal Code section 273.5.



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# Commission on State Mandates

Original List Date: 11/17/2003

Mailing Information: Draft Staff Analysis

Last Updated:

First Print Date: 10/15/2004

## Mailing List

Claim Number: 98-TC-14

Issue: Domestic Violence Arrests and Victim Assistance

### 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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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of:

City of Pasadena,  
Claimant

CSM-4376

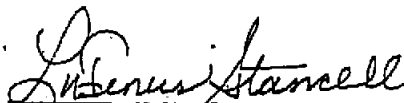
Penal Code Section 13519,  
Subdivisions (b) and (c)  
Chapter 1609, Statutes of 1984  
Domestic Violence Training

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on February 28, 1991.

IT IS SO ORDERED February 28, 1991.



Lafenus Stancell, Chairperson  
Commission on State Mandates

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of:

City of Pasadena,  
Claimant

No. CSM-4376  
Penal Code Section 13519,  
Subdivisions (b) and (c)  
Chapter 1609, Statutes of 1984  
Domestic Violence Training

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on August 23, 1990, in Sacramento, California, during a regularly scheduled hearing.

Ms. Ann Higginbotham, Assistant City Attorney for Pasadena; Mr. Louis Chappue, David M. Griffith & Associates, Ltd., representing the City of Pasadena; Mr. Norman Coppinger, League of California Cities; Sgt. Kevin White, Pasadena Police Department; Ms. Marsha Bedwell, Deputy Attorney General, representing the Commission on Peace Officer Standards and Training (POST); Mr. Norman Boehm, Executive Director of POST; and Mr. Jim Apps, Department of Finance, introduced themselves and appeared in conjunction with this item. There were no other appearances.

1 Evidence both oral and documentary having been introduced, the  
2 matter submitted, and vote taken, the Commission finds:

3  
4 ISSUES

5  
6 Do the provisions of Penal Code section 23519, subdivisions (b)  
7 and (c), as added by Chapter 1609, Statutes of 1984  
8 (Chapter 1609/84), require local agencies to implement a new  
9 program or provide a higher level of service in an existing  
10 program, within the meaning of Government Code section 17514  
11 and section 6, article XIII B of the California Constitution?

12  
13 If so, are local agencies entitled to reimbursement under the  
14 provisions of section 6 of article XIII B?

15  
16 FINDINGS OF FACT

17  
18 The test claim was filed with the Commission on March 28, 1990,  
19 by the City of Pasadena. The elements for filing a test claim,  
20 as specified in section 1183 of Title 2 of the California Code  
21 of Regulations, were satisfied.

22  
23 The subject of this test claim pertains to the provisions of  
24 Penal Code section 13519, subdivisions (b) and (c), as added by  
25 Chapter 1609/84. This legislation requires domestic violence  
26 training to become a part of a law enforcement officer's basic  
27 training course. In addition, all law enforcement officers who



1 have received their basic training before January 1, 1986,  
2 shall participate in supplemental training on domestic violence  
3 subjects, as prescribed and certified by POST.  
4

5 Prior to the passage of Chapter 1609/84, law enforcement  
6 officers were not required to obtain domestic violence  
7 training.  
8

9 The City of Pasadena alleged that it incurred \$22,274.00 in  
10 unrecovered salary costs in providing domestic violence  
11 training pursuant to Penal Code section 13519, subdivisions (b)  
12 and (c).  
13

14 The Department of Finance and POST recommended that the test  
15 claim be denied because the provisions of Penal Code  
16 section 13519, subdivisions (b) and (c), do not constitute a  
17 reimbursable state mandated program upon local government.  
18

19 The Office of Criminal Justice Planning recommended that the  
20 claim be approved because the legislation subject to the test  
21 claim results in a reimbursable state mandated program.  
22

23 Penal Code section 13519 states, in pertinent part:

24 "(a) The commission [POST] shall implement by  
25 January 1, 1986, a course or courses of  
26 instruction for the training of law enforcement  
27 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

1 enforcement of criminal laws in domestic violence  
2 situations, availability of civil remedies and  
3 community resources, and protection of the  
4 victim.

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

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

12 "All law enforcement officers who have  
13 received their basic training before January 1,  
14 1986, shall participate in supplementary training  
15 on domestic violence subjects, as prescribed and  
16 certified by the commission. This training shall  
17 be completed no later than January 1, 1989.

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

23 The Commission found that the provisions of Penal Code  
24 section 13519, subdivisions (b) and (c), impose upon law  
25 enforcement officers the requirements of domestic violence  
26 training.

27 Moreover, the Commission found that the provisions of Penal  
Code section 13519, subdivisions (b) and (c), do not require  
local agencies to train law enforcement officers in domestic  
violence and to pay for the cost of such training.

Furthermore, the Commission found that some local agencies may  
have incurred the cost of training their law enforcement

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1 officers in domestic violence subjects through collective  
2 bargaining agreements.

3  
4 Section 1005, subdivision (a), of Title 11, Code of California  
5 Regulations, states in pertinent part:

6 "Basic Training (Required).

7 "(1) Every regular officer except those  
8 participating in a POST-approved field training  
9 program, shall satisfactorily meet the training  
10 requirements of the Basic Course before being  
11 assigned duties which include the exercise of  
12 peace officer power.

13 "Requirements for the Basic Course are set forth  
14 in PAM [POST Administrative Manual], Section  
15 D-1-3.

16 " . . . . ."

17 The basic training portion of the POST Administrative Manual  
18 under sections D-1-2, subdivision (d), and D-1-3 provide that a  
19 minimum of 520 hours of instruction in the Basic Course is  
20 required.

21 section 1005, subdivision (d), of Title 11, California Code of  
22 Regulations, states in pertinent part:

23 "Continuing Professional Training (Required).

24 "(1) Every peace officer below the rank of a  
25 middle management position as defined in  
26 Section 100 (p) shall satisfactorily complete the  
27 Advanced Officer Course of 24 or more hours at  
28 least once every two years after completion of  
29 the Basic Course,

30 " . . . . . \* . . . . ."

31 "(4) Requirements for the Advanced Officer  
32 Course are set forth in the POST Administrative  
33 Manual, Section D-2."

1 The advanced officer course set forth in section D-2-5 of the  
2 POST Administrative Manual states:

3 "Minimum Hours: The Advanced Officer Course  
4 shall consist of time blocks of not less than two  
5 hours each, regardless of subject matter, with an  
6 overall minimum of no less than 24 hours. . . ."

7 Section 1005, subdivision (g), of Title 11, California Code of  
8 Regulations, provides in pertinent part:

9 "Approved Courses.

10 "(1) Approved courses pertain only to training  
11 mandated by the Legislature for various kinds of  
12 peace officers and other groups. The Commission  
13 may designate training institutions or agencies  
14 to present approved courses.

15 "(2) Requirements for Approved Courses are set  
16 forth in PAM [POST Administrative Manual],  
17 Section D-7."

18 The approved courses set forth in the POST Administrative  
19 Manual, section D-7-2, provides that a minimum of 8 hours of  
20 domestic violence training is required pursuant to Penal Code  
21 section 13519.

22 The Commission found that section 1005, subdivision (g), of  
23 Title 11, California Code of Regulations and POST  
24 Administrative Manual, section D-7-2, required the inclusion of  
25 8 hours of domestic violence training.

26 In addition, the Commission found that domestic violence  
27 training was included within the existing 520 minimum basic  
course training hours and that the 520 minimum hours remained  
the same before and after the enactment of Penal Code  
section 13519, subdivisions (b) and (c).

1 Also, the Commission found that domestic violence training may  
2 be included within the existing 24 minimum advanced officer  
3 training program hours and that the 24 minimum hours remained  
4 the same before and after the enactment of Penal Code  
5 section 13519, subdivisions (b) and (c).

6  
7 Section 1005, subdivision (f), of Title 11, California Code of  
8 Regulations, states in pertinent part:

9 "Technical Courses (Optional) .

10 "(1) Technical Courses are designed to develop  
11 skills and knowledge in subjects requiring  
12 special expertise;

13 " . . . . . "

14 The Commission found that domestic violence training through  
15 the skills and knowledge module are optional courses and not  
16 required by the provisions of Penal Code section 13519,  
17 subdivisions (b) and (c).

18 APPLICABLE LAW RELEVANT TO THE DETERMINATION  
19 OF A REIMBURSABLE STATE MANDATED PROGRAM

20  
21 Government Code section 17500 reads, in pertinent part:

22 " . . . The Legislature finds and declares  
23 that the failure of the existing process to  
24 adequately and consistently resolve the  
25 complex legal questions involved in the  
26 determination of state-mandated costs has  
27 led to an increasing reliance by local  
agencies and school districts on the  
judiciary and, therefore, in order to  
relieve unnecessary congestion of the  
judicial system, it is necessary to create a  
mechanism which is capable of rendering  
sound quasi-judicial decisions and providing

1 an effective means of resolving disputes  
2 over the existence of state-mandated local  
3 programs.

4 "It is the intent of the Legislature in  
5 enacting this part to provide for the  
6 implementation of Section 6 of Article  
7 XIII B of the California Constitution and to  
8 consolidate the procedures for reimbursement  
9 of statutes specified in the Revenue and  
10 Taxation Code with those identified in the  
11 Constitution. Further, the Legislature  
12 intends that the Commission on State  
13 Mandates, as a quasi-judicial body, will act  
14 in a deliberative manner in accordance with  
15 the requirements of Section 6 of Article  
16 XIII B of the California Constitution2

17 Government Code section 17514 provides:

18 "Costs mandated by the state means any  
19 increased costs which a local agency or  
20 school district is required to incur after  
21 July 1, 1980, as a result of any statute  
22 enacted on or after January 1, 1975, or any  
23 executive order implementing any statute  
24 enacted on or after January 1, 1975, which  
25 mandates a new program or higher level of  
26 service of an existing program within the  
27 meaning of Section 6 of Article XIII B of  
the California Constitution."

Government Code section 17551, subdivision (a), provides:

"The commission, pursuant to the provisions  
of this chapter, shall hear and decide upon  
a claim by a local agency or school district  
that the local agency or school district is  
entitled to be reimbursed by the state for  
costs mandated by the state as required by  
Section 6 of Article XIII B of the  
California Constitution."

Government Code section 17552 reads:

"This chapter shall provide the sole and  
exclusive procedure by which a local agency  
or school district may claim reimbursement  
for costs mandated by the state as required  
by Section 6 of Article XIII B of the  
California Constitution/

1 Section 6, article XIII B of the California Constitution reads:

2 "Whenever the Legislature or any state  
3 agency mandates a new program or higher  
4 level of service on any local government,  
5 the state shall provide a subvention of  
6 funds to reimburse such local government for  
7 the costs of such program or increased level  
8 of service, except that the Legislature may,  
9 but need not, provide such subvention of  
10 funds for the following mandates:

- 11 "(a) Legislative mandates requested by the  
12 local agency affected;  
13 "(b) Legislation defining a new crime or  
14 changing an existing definition of a  
15 crime; or  
16 "(c) Legislative mandates enacted prior to  
17 January 1, 1975, or executive orders  
18 or regulations initially implementing  
19 legislation enacted prior to  
20 January 1, 1975."

21 CONCLUSION

22 The Commission determines that it has the authority to decide  
23 this claim under the provisions of Government Code  
24 sections 17508 and 17551, subdivision (a).

25 The Commission concludes that the provisions of Penal Code  
26 section 13519, subdivisions (b) and (c), as added by  
27 Chapter 1609/84:

- 28 1. do not require local agencies to implement a domestic  
29 violence training program for their law enforcement  
30 officers and to pay for the cost of such training;  
31  
32 2. do not increase the minimum basic course training hours  
33 nor the minimum advanced officer training hours and,

1 consequently, no additional costs are incurred by local  
2 agencies: and

3  
4 3. do not require local agencies to provide domestic  
5 violence training pursuant to the POST skills and knowledge  
6 module.

7  
8 Accordingly, the Commission further concludes that the  
9 legislation subject to this test claim does not constitute a  
10 reimbursable state mandated program upon local agencies within  
11 the meaning of Government Code section 17514 and section 6,  
12 article XIII B of the California Constitution,,  
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DECLARATION OF SERVICE BY MAIL

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 and business address is 1414 K Street, Suite 315, Sacramento, California 95814.

On March 14, 1991, I served the attached Statement of Decision regarding Domestic Violence Training by placing a true copy thereof in an envelope addressed to each of the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

See attached service 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 March 14, 1991 at Sacramento, California.

  
\_\_\_\_\_  
CHARLOTTE SMITH

WP0554h(14)

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Sections 13519 and 13730, as amended by Chapter 965, Statutes of 1995

And filed on December 27, 1996;

By the County of Los Angeles, Claimant.

NO. CSM - 96-362-01

DOMESTIC VIOLENCE TRAINING  
AND INCIDENT REPORTING

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

(Presented for adoption on  
January 29, 1998)

**PROPOSED STATEMENT OF DECISION**

This test claim was heard by the Commission on State Mandates (Commission) on December 18, 1997, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles; Mr. Glen Fine, appeared for the Commission on Peace Officer Standards and Training; and Mr. James Apps and Mr. James Foreman appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Captain Dennis D. Wilson, Deputy Bernice K. Abram, and Ms. Martha Zavala.

At the hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

**PART I. DOMESTIC VIOLENCE TRAINING**

**Issue 1:** Does the domestic violence continuing education requirement upon law enforcement officers under Penal Code section 13519, subdivision (e), impose a new program or higher level of service

upon local agencies under section 6 of article XIII B of the California Constitution?

The County of Los Angeles alleged that Penal Code section 13519, subdivision (e), as amended by Chapter 965, Statutes of 1995, imposes a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIII B of the California Constitution. The statute which is the subject of this test claim is as follows:

"(e) Each law enforcement *officer* below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence *shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d).* The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature *not to increase the annual training costs of local government.*"  
(Emphasis added.)

#### COMMISSION FINDINGS:

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language (1) must direct or obligate an activity or task upon local governmental entities, and (2) the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.<sup>1</sup>

The foregoing provisions require each law enforcement *officer* below the rank of supervisor, who is assigned to patrol duties and normally responds to domestic violence calls or incidents, to complete an updated course of instruction on domestic violence every two years. This course of instruction must be developed according to POST's standards and guidelines, which are described in subdivision (d) of section 13519. Although the statute imposes an express continuing education requirement upon individual officers and not local agencies, the last sentence of subdivision (e) indicates the Legislature's awareness of the potential impact of this training course upon local governments (i.e., "[i]t is the intent of the Legislature not to increase the annual training costs of local government.")

<sup>1</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

Thus, the Commission found this continuing education activity is imposed upon local agencies whose local law enforcement officers carry out a basic governmental function by providing services to the public. Such activity is not imposed on state residents generally.<sup>2</sup> In sum, the Commission found that the first requirement to determine whether the test claim legislation imposes state-mandated program is satisfied.

Second, subdivision (e) of section 13519 imposes a new requirement on certain law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. This training obligation was not required immediately prior to the enactment of subdivision (e). Instead, local law enforcement agencies were *encouraged*, but not required, to include periodic updates and training on domestic violence *as part of their advance officer training program only*. (Former Pen. Code § 13519, subd. (c).) Accordingly, the Commission found that the second requirement to determine whether the test claim legislation imposes a state mandated program is satisfied.

Third, the Commission found that subdivision (e) is state mandated because local agencies have no options or alternatives available to them and, therefore, the officers described in subdivision (e) must attend and complete the updated domestic violence training course from a POST-certified class.<sup>3</sup>

Based on the foregoing, the Commission found that section 13519, subdivision (e), imposes a new program upon local agencies.

**Issue 2:** Does section 13519, subdivision (e), impose costs mandated by the state upon local agencies which are reimbursable from the State Treasury?

The latter portion of Penal Code section 13519, subdivision (e), provides in pertinent part:

“ . . . . The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local governmental entities.”  
(Emphasis added.)

Given the above statutory language, the Commission continued its inquiry to determine whether local law enforcement agencies incur any increased costs as a result of the test claim statute.

#### COMMISSION FINDINGS:

Government Code section 17514 defines *costs mandated by the state* as:

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<sup>2</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>3</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 832 and 836.

" . . . . [A]ny increased costs which a local agency . . . is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, . . . which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

If the claimant's domestic violence training course, under section 13519, subdivision (e), caused an increase in the total number of continuing education hours required for these certain officers, then the increased costs associated with the new training course are reimbursable as "costs mandated by the state" (subject to any offset from the receipt of any state moneys received for the costs incurred in attending and completing the subdivision (e) domestic violence training course).

On the other hand, if there is no overall increase in the total number of continuing education hours for these officers attributable to the subdivision (e) domestic violence training course, then there are no increased training costs associated with this training course. Instead, the subdivision (e) course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

Based on the evidence submitted by the parties, and the plain language of the test claim statute, the Commission found that local agencies incur *no* increased "costs mandated by the state" in carrying out the two hour domestic violence update training.

POST regulations provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. Section 1005, subdivision (d), of Title 11, California Code of Regulations, states in pertinent part:

"Continuing Professional Training (Required).

"(1) Every peace officer below the rank of a middle management position as defined in section 1001 and every designated Level 1 Reserve Officer as defined in Commission Procedure H-1-2 (a) *shall satisfactorily complete the Advanced Officer Course of 24 or more hours at least once every two years after meeting the basic training requirement.*"

"(2) The above requirement may be met by satisfactory completion of one or more Technical Courses totaling 24 or more hours, or satisfactory completion of an alternative method of compliance as determined by the Commission..."

"(3) Every regular officer, regardless of rank, may attend a certified Advanced Officer Course and the jurisdiction may be reimbursed."

"(4) Requirements for the Advanced Officer Course are set forth in the POST Administrative Manual, section D-2."

The evidence submitted by the parties reveals that the updated training is accommodated or absorbed within the 24-hour continuing education requirement provided in the above regulation.

POST Bulletin 96-2 was forwarded to local law enforcement agencies shortly after the test claim statute was enacted. The Bulletin specifically recommends that local agencies make the required updated domestic violence training part of the officer's continuing professional training. It does not mandate creation and maintenance of a separate schedule and tracking system for the required domestic violence training. To satisfy the training in question, POST prepared and provided local agencies with course materials and a two-hour videotape.

Additionally, the letter dated July 11, 1997, from Glen Fine of POST indicates POST's interpretation of the test claim statute that the domestic violence update training be included *within* the 24 hour continuing education requirement set forth above. Accordingly, the two-hour course may be credited toward satisfying the officer's 24-hour continuing education requirement.

The Commission disagreed with the claimant's contention that it is entitled to reimbursement as a result of the test claim statute since it cannot redirect funds for salary reimbursement from other non-funded POST training modules. The POST memorandum submitted by the claimant, dated July 6, 1993, reveals that the claimant has not received salary reimbursement for officer training since 1993, before the enactment of the test claim statute.

Accordingly, the Commission found that local agencies incur no increased costs mandated by the state in carrying out this two hour course because:

- *immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- the two hour domestic violence training update may be credited toward satisfying the officer's 24 hour minimum,
- the two hour training is *not* separate and apart nor "on top of" the 24 hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- of the 24 hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22 hour requirement by choosing from *the many elective courses* certified by POST.

In sum, the Commission found that local agencies do *not* incur increased training costs for the two hour domestic violence training update because the course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training as spelled out in the test claim statute. The minimum POST requirement for continuing education for the officers in question *immediately before and after* the effective date of the test claim statute was and remains at 24 hours. Of the 24 hours, the Legislature requires that two out of the 24 must be an updated course on domestic violence certified by POST.

## **PART I CONCLUSION**

Based on the foregoing evidence, the Commission concludes that Penal Code section 13519, subdivision (e), does not impose a reimbursable state mandated program upon local law enforcement agencies and denies this portion of the test claim.

## **PART II: DOMESTIC VIOLENCE INCIDENT REPORTING**

**Issue 1:** Do the provisions of Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, impose a new program or higher level of service upon local agencies within the meaning of section 6, article XIII B of the California Constitution?

### **BACKGROUND:**

Penal Code section 13730 was originally added by Chapter 1609, Statutes of 1984. At that time, the statute required each law enforcement agency to develop a domestic violence incident report. The 1984 statute provided the following:

"(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.*" (Emphasis added.)

Chapter 1609, Statutes of 1984, was the subject of a previous test claim (CSM-4222) approved by the Commission on January 22, 1987. The Parameters and Guidelines for Chapter 1609, Statutes of 1984, provided that the following costs were reimbursable:

- (1) the "costs associated with the *development of a Domestic Violence Incident Report form* used to record and report domestic violence calls"; and
- (2) costs incurred "for the *writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.*"

In 1993, the Legislature made minor nonsubstantive changes to section 13730 and amended subdivision (a) to include the second underlined sentence relating to the written incident report required under subdivision (c):

"(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 such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General." (Chapter 1230, Statutes of 1993.)

Since the Legislature required local law enforcement agencies to develop and complete the domestic violence incident report form in subdivision (c) under the 1984 legislation, the 1993 amendment to subdivision (a) merely *clarified* this reporting requirement, rather than mandating a new or additional requirement. The Commission further noted that a test claim has never been filed on Chapter 1230, Statutes of 1993, requesting that the amendment constitute a new program or higher level of service.

During fiscal years 1992/93 through 1996/97, the Legislature no longer mandated the incident reporting requirements set forth in Penal Code section 13730 pursuant to Government Code section 17581. Accordingly, it was optional for local law enforcement agencies to implement the domestic violence incident reporting activity during these fiscal years. The fiscal year 1997/98 budget continues the suspension, effective August 18, 1997. (Chapter 282, Statutes of 1997, Item 9210-295-0001, par. 2, pp. 587-588.)

In 1995, the Legislature amended Penal Code section 13730, subdivision (c), in Chapter 965, Statutes of 1995. Subdivision (c), as amended by Chapter 965, Statutes of 1995, provides the following:

"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. 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 had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim. (Underscored text added by Chapter 965, Statutes of 1995)

The County of Los Angeles alleged that Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, imposes a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIII B of the California Constitution.

#### COMMISSION FINDINGS:

The Commission found that Penal Code section 13730, subdivision (c), obligates local law enforcement agencies to include in the domestic violence incident reports additional information relating to the use of alcohol or controlled substances by the abuser, and any prior domestic violence responses to the same address. This additional reporting activity is performed by local law enforcement agencies that carry out basic governmental functions by providing a service to the public. Such activities are not imposed on state residents generally.<sup>4</sup> Thus, the Commission found that the first requirement to determine whether a statute imposes a reimbursable state mandated program is satisfied.

Second, before the enactment of the test claim statute, local law enforcement agencies were required to develop and complete domestic violence incident reports. However, local agencies were *not* required to include in the report specific information relating to the alleged abuser's use of alcohol or controlled substances, or information relating to any prior domestic violence calls made to the same address.

Accordingly, the Commission found that Penal Code section 13730, subdivision (c), constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

The Commission's inquiry continued to determine whether the test claim legislation is state mandated for purposes of reimbursement from the State Treasury.<sup>5</sup> As previously indicated, the original statute, which required the development and completion of a

<sup>4</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>5</sup> *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 832 and 836.

domestic violence incident report was determined by the Commission to be a reimbursable state mandated program. However, this program was made optional by the Legislature under Government Code section 17581.

Issue 2: If Penal Code section 13730, as originally added by Chapter 1609, Statutes of 1984, is made optional by the Legislature pursuant to Government Code section 17581, are subsequent legislative amendments to section 13730 also made optional?

The County of Los Angeles contended that Chapter 965, Statutes of 1995, is not included in the Legislature's suspension of the original statute. The County contended that the chapters need to be addressed separately. The County further contended that Chapter 965, Statutes of 1995, is not automatically made optional by association with the original statute. Rather the determination of whether a statute is suspended is up to Legislature.

**COMMISSION FINDINGS:**

Government Code section 17581 provides, in pertinent part, the following:

"(a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year if all of the following apply:

"(1) The statute or executive order, or portion thereof, has 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 pursuant to section 6 of article XIII B of the California Constitution.

"(2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for that fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

"(b) 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.

"....."

The provisions of section 17581 provide that if both of the conditions set forth therein are satisfied, the identified state mandated program becomes optional and the affected local agencies are not required to carry out the state program. If the local agency elects to carry out the identified state program, however, it is authorized to assess a fee to recover the costs reasonably borne by the local agency.

The Commission determined that Penal Code section 13730, as originally added by Chapter 1609, Statutes of 1984, imposed a reimbursable state mandated program upon local law enforcement agencies. As previously indicated, this program required all law enforcement agencies to develop and complete an incident report relating to all domestic violence calls.

However, during fiscal years 1992/93 through 1997/98, the Legislature specifically identified Chapter 1609, Statutes of 1984 in the Budget Act for the periods in question pursuant to Government Code section 17581, assigning zero dollar appropriations to the original state mandated program under Chapter 1609, Statutes of 1984. Both conditions set forth in section 17581 were met, i.e., (1) the Commission determined that Penal Code section 13730 of Chapter 1609, Statutes of 1984, imposed a state mandated program and (2) the Legislature identified Chapter 1609, Statutes of 1984, and appropriated zero funds. Thus, the domestic violence incident report program was optional and no longer state mandated. Notwithstanding, the Commission recognized that during the period from July 1, 1997 through August 17, 1997, and during subsequent periods when the state operates without a budget, the original suspension of the mandate would not be in effect.

The test claim statute (Chapter 965, Statutes of 1995) amends Penal Code section 13730 by requiring additional information to be contained within the domestic violence incident report. Since the development and completion of the incident report has been made optional by the Legislature pursuant to Government Code section 17581, the Commission inquired whether the additional requirements imposed by the test claim are also optional.

On its face, the 1997/98 State Budget Act does not identify Chapter 965, Statutes of 1995, as a suspended mandate. However, the Commission found that, in substance, the test claim legislation is affected by the Legislature's actions making the original test claim legislation optional.

The 1995 amendment to subdivision (c) of section 13730 requires information relating to the alleged abuser's use of alcohol or controlled substances, and any prior responses to the same address be *added to the domestic violence incident report form itself*. The Commission agreed that the additional notations required under the test claim statute constitute an additional activity. For this reason, the Commission found that the test claim statute constitutes a new program or higher level of service.

However, with the Legislature's use of the word "notation" in subdivision (c), the Commission disagreed that the 1995 amendment to section 13730 made the domestic violence incident report "very different" from what was required in 1984. The test

claim statute does not require a new or different report. It simply specifies the minimum content of the underlying report.

Therefore, the Commission found that the new requirements imposed by Chapter 965, Statutes of 1995, are *not* independent of the incident report as suggested by the claimant; rather, they are encompassed and directly connected to the underlying incident reporting program established by the Legislature in Chapter 1609, Statutes of 1984.<sup>6</sup>

The Commission further found that section 13730, subdivision (c), requires additional information to be included on the domestic violence incident report, the performance of domestic violence incident reporting is *not* state mandated because the development and completion of the report itself was made optional by the Legislature. In other words, 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.

On the other hand, if a local agency voluntarily opts or elects to complete the incident report, then the additional information must be included on the report pursuant to the provisions of the test claim statute. In this respect, Chapter 965, Statutes of 1995, is not a meaningless and unnecessary law as suggested by the claimant.

Therefore, the Commission determined that the new additional information to the domestic violence incident report is not a reimbursable state-mandated program because:

- Presently, the State Budget Act of 1997/98 makes the completion of the incident report *optional* and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

Notwithstanding the foregoing, the Commission determined that for the *limited* window period from July 1, 1997 through August 17, 1997, the domestic violence incident reporting, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

The Commission further determined that in all subsequent "window periods" when the state operates without a budget, the domestic violence incident reporting program,

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<sup>6</sup> This test claim is to be distinguished from the previously decided test claim (September 25, 1997), entitled *Domestic Violence Arrest Policies and Standards*, where the Commission determined that the legislation in question imposed new and distinct activities and, therefore, was not affected by Government Code section 17581. In the *Domestic Violence Arrest Policies and Standards* test claim, the Legislature made optional the original requirement to develop, adopt and implement written policies for *response* to domestic violence calls pursuant to Government Code section 17581. The test claim legislation amended the statute adding the requirement to develop and implement *arrest* policies for domestic violence offenders, a new and distinct requirement not encompassed by the previously suspended requirement to develop response policies.

including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

## **PART II CONCLUSION**

The Commission concludes that pursuant to section 6 of article XIII B of the California Constitution and section 17514 of the Government Code that:

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does not impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581.
- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for the *limited* window period from July 1, 1997 (the start of the new fiscal year) through August 17, 1997, when the State Budget Act makes the incident reporting program optional.
- 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.

BEFORE THE COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of:

Madera Police Department  
Claimant

No. CSM-4222

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on January 22, 1987.

IT IS SO ORDERED January 22, 1987.

*Peter Pelkofer*

Peter Pelkofer, Vice Chairman  
Commission on State Mandates

BEFORE THE COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of:

Madera Police Department )  
Claimant )

CSM-4222

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on November 20, 1986, in Sacramento, California, during a regulary scheduled meeting of the commission. Chief Gordon Skeels appeared on behalf of the Madera Police Department. Sterling O'Ran of the Office of Criminal Justice Planning also appeared.

Evidence both oral and documentary having been introduced, the matter submitted, and a vote taken the commission finds:

I.  
NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; legislative appropriation; a timely filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II.  
FINDINGS OF FACT

1. The test claim was filed with the Commission on State Mandates on June 23, 1986, by the Madera Police Department.
2. The subject of the claim is Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985.

3. Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985 require that California law enforcement agencies develop, adopt and implement written policies and standards for officers' response to domestic violence calls. It also requires law enforcement agencies to maintain records and recording systems specific to domestic violence activities and to provide specific written information to apparent victims of domestic violence.
4. The Madera Police Department has incurred increased costs as a result of having to: develop, adopt and implement standards for police officers' responses to domestic violence calls; maintain records and recording systems; provide written information to victims of domestic violence; compile and submit monthly summary reports to the State Attorney General; develop of a Domestic Violence Incident Report form.
5. The Madera Police Department's resulting increased costs are costs mandated by the State.

III.  
DETERMINATION OF ISSUES

1. The Commission has the authority to decide this claim under the provisions of Government Code Section 17551.
2. Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985 impose a reimbursable state mandate upon California law enforcement agencies. The Madera Police Department has established that these statutes impose a higher level of service by requiring law enforcement agencies to develop, adopt and implement policies and standards for officer's responses to domestic violence calls; by requiring the maintenance of records and recording systems, and by requiring that specific written information be provided to victims of domestic violence.

WP: 1452A



PARAMETERS AND GUIDELINES  
Chapter 1609, Statutes of 1984 and  
Chapter 668, Statutes of 1985  
DOMESTIC VIOLENCE

I. SUMMARY OF MANDATE

Chapter 1609, Statutes of 1984 added Chapters 1 through 5, and non-consecutive Sections 13700 through 13731 to the California Penal Code. These sections require all law enforcement agencies in the state to develop, adopt and implement written policies and standards for officers' response to domestic violence calls by January 1, 1986. Existing local policies and those developed must be in writing and available to the public upon request and must include specific standards for a range of related activities.

Chapter 1609, Statutes of 1984 also requires law enforcement agencies to develop an incident report form and maintain records of all protection orders with respect to domestic violence incidents. This is required to be available for the information of and use by law enforcement officers responding to domestic violence related calls for assistance and to provide information about such calls to the Attorney General on a monthly basis.

II. COMMISSION ON STATE MANDATES DECISION

On November 20, 1986, the Commission on State Mandates found that Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1984 imposed an increased level of service upon local law enforcement agencies thereby mandating that these agencies provide the services as described above. The commission's finding was in response to a test claim, originally filed, by the City of Madera Police Department on June 23, 1986.

III. ELIGIBLE CLAIMANTS

Law enforcement agencies are eligible to file for reimbursement of costs incurred as a result of the state legislated domestic violence programs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1609, Statutes of 1984 became effective on January 1, 1985, and Chapter 668, Statutes of 1985 became effective January 1, 1986. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on June 23, 1986, therefore, costs incurred on or after July 1, 1985, are reimbursable. Costs incurred as a result of Chapter 668, Statutes of 1985 are reimbursable after its effective date of January 1, 1986.

V. REIMBURSABLE COSTS

A. The following costs associated with the development of a Domestic Violence Policy are reimbursable.

- (1) For the costs associated with the development, adoption and implementation of policies and standards, termed a Domestic Violence Policy, pursuant to California Penal Code Section 13701, involving domestic violence implemented by January 1, 1986.
- (2) For the costs associated with the development of a system for recording all domestic violence-related calls for assistance to include whether weapons are involved.
- (3) For the costs incurred after January 1, 1986, for preparation of a statement of information for victims of incidents of domestic violence.
- (4) For monthly summary reports compiled by the local agency and submitted to the Attorney General, State of California.
- (5) For the costs associated with the development of a Domestic Violence Incident Report form used to record and report domestic violence calls.

B. The following costs are now required when responding to incidents involving domestic violence, as a result of Chapter 668, and did not exist prior to January 1, 1986. These costs are reimbursable.

- (1) For furnishing the victim at the scene of a domestic violence incident with written information regarding legal options and available assistance and any necessary explanation of that information, or for providing orally communicated information regarding legal options and available assistance to victims via telephone when law enforcement response is not required.
- (2) For the writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.
- (3) For the establishment and utilization of a system to verify temporary restraining orders, stay away orders, and proofs of service at the scene of any incidents of domestic violence.

C. The costs for the maintenance of all protection order records which restrain an individual from the home or other court defined areas who has been accused of an illegal behavior and has applied to the court and been granted such an order.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise provided in Section 17564 of the Government Code.

#### VI. CLAIM PREPARATION

Attach a statement showing the actual increased costs incurred to comply with the mandate.

##### A. Employee Salaries and Benefits

Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and productive hourly rates and benefits.

##### B. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

##### C. Allowable Overhead Costs

Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.

##### D. Supporting Data

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of the costs. These documents must be kept on file and made available at the request of the State Controller.

#### VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claimed. In addition, this reimbursement for this mandate received from any source, e.g., federal, state, block grants, etc., shall be identified and deducted from this claim.

VIII. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone Number

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Test Claim on:

Penal Code Section 13701, as amended by  
Chapter 246, Statutes of 1995 ; filed on  
December 27, 1996.

By County of Los Angeles, Claimant.

NO. CSM-96-362-02

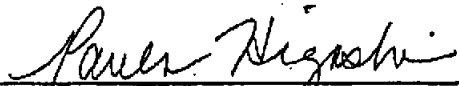
*Domestic Violence Arrest Policies and  
Standards*

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

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was adopted on  
September 25, 1997.

This Decision shall become effective on September 29, 1997.



PAULA HIGASHI, Executive Director

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON

Penal Code Section 13701, as amended by Chapter 246, Statutes of 1995; filed on December 27, 1996,

By the County of Los Angeles, Claimant,

NO. CSM - 96-362-02

*Domestic Violence Arrest Policies and Standards*

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

[Presented for adoption on  
September 25, 1997]

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on July 31, 1997, during a regularly scheduled hearing. Mr. Allan Burdick appeared on behalf of the CSAC SB 90 Service and the County of Los Angeles,

At that hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

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

**Issue 1:** Does Penal Code section 13701 as amended by Chapter 246, Statutes of 1995, impose a reimbursable state mandated program upon local agencies pursuant to section 6, article XIII B of the California Constitution, by requiring the development, adoption and implementation of arrest policies for domestic violence offenders with input from local violence agencies?

<sup>1</sup> Section 6 of article XIII B states: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislature mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

## BACKGROUND AND FINDINGS OF FACT

The County of Los Angeles alleged that Penal Code section 13701, as amended by Chapter 246, Statutes of 1995, imposes a new program or higher level of service in an existing program upon local agencies within the meaning of section 6 of article XIII B of the California Constitution. The statute which is the subject of this test claim is as follows:

Penal Code section 13701 as amended by Chapter 246, Statutes of 1995, adds subdivision (b) and provides the following:

"The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (Commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. *These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.*" (Emphasis added.)

## THE COMMISSION FINDS

The foregoing provisions require local law enforcement agencies to develop, adopt and implement *arrest* policies for domestic violence offenders by July 1, 1996. The provisions further require the local agencies to seek the input of local domestic violence agencies in the development and implementation of arrest policies. Prior to the amendment of Penal Code section 13701 in 1995, law enforcement agencies were only required to develop written policies for *response* to domestic violence calls and were encouraged, but not obligated, to consult with violence experts.<sup>2</sup>

<sup>2</sup> Penal Code section 13701, subdivision (a), as *originally* added by Chapter 1609, Statutes of 1984, provides the following: "(a) Every law enforcement agency in 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...."

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental entities. Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.<sup>3</sup>

The test claim legislation obligates local law enforcement agencies to develop and implement arrest policies for domestic violence offenders, and further obligates the local agencies to consult with local domestic violence agencies. These activities are performed by local law enforcement agencies who carry out a basic governmental function by providing a service to the public. Such activities are not imposed on state residents generally.<sup>4</sup> Therefore, the first requirement, necessary to determine whether the Legislature has imposed a reimbursable state mandated program, is satisfied.

Moreover, the provisions of the test claim legislation, specifically, subdivision (b), imposes new requirements for local law enforcement agencies to develop, adopt and implement arrest policies for domestic violence offenders, which were not encompassed in the original state mandated program added by Chapter 1609184. The original program only required the implementation of *response* policies and standards for domestic violence calls. Whereas, the test claim legislation requires the development and implementation of *arrest* policies. The test claim legislation, unlike the original program, also requires local law enforcement agencies to seek input from local violence agencies to assist in the development and implementation of written arrest policies. These new and distinct activities were not required by the Legislature immediately before the enactment of the test claim legislation.

Therefore, the Commission determined that the test claim legislation constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

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"In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts. . . ."

Commission points out that the 1995 test claim legislation added the provisions of subdivision (b) and made paragraph designation and nonsubstantive changes in the provisions contained in subdivisions (c) and (d).

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

<sup>4</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.



Issue 2: Does Penal Code section 13701 as amended by Chapter 246, Statutes of 1995, impose a reimbursable state mandated program upon local agencies pursuant to section 6, article XIII B of the California Constitution<sup>5</sup>, by requiring the development, adoption and implementation of arrest policies for domestic violence offenders with input from local violence agencies?

Government Code section 17581 provides, in pertinent part, the following:

"(a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year if all of the following apply:

"(1) The statute or executive order, or portion thereof, has 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 pursuant to section 6 of article XIII B of the California Constitution.

"(2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for that fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

"(b) 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. "

" . . . . . "

The provisions of section 17581 provide that if both of the conditions set forth therein are satisfied, the identified state mandated program becomes optional and the affected local agencies are not required to carry out the state program. If the local agency elects to carry out the identified state program, however, it is authorized to assess a fee to recover the costs reasonably borne by the local agency.

<sup>5</sup> Section 6 of article XIII B states: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislature mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. "

The Commission determined that Penal Code section 13701; as originally added by Chapter 1609, Statutes of 1984, imposed a reimbursable state mandated program upon local law enforcement agencies! As previously indicated, this program required all law enforcement agencies to develop, adopt and implement written policies for *response* to domestic violence calls.

However, during fiscal years 1992/93 through 1996/97, the Legislature specifically identified Chapter 1609/84 in the Budget Act for the periods in question pursuant to Government Code section 17581, assigning zero dollar appropriations to the original state mandated program under Chapter 1609/84. Therefore, both conditions set forth in section 17581 were met, making the requirements imposed under the original test claim optional and, thus, no longer state mandated.

Nevertheless, the Commission recognized that the test claim legislation is not affected by the Legislature's actions making the original test claim legislation optional. The instant test claim legislation which added subdivision (b) to Penal Code section 13701, now requires law enforcement agencies to develop and implement arrest policies for domestic violence offenders with input from local domestic violence agencies. These activities are new and distinct, and not encompassed by the original test claim legislation, which merely required all law enforcement agencies to develop, adopt and implement written policies for *response* to domestic violence calls.<sup>7</sup>

Accordingly, the Commission determines the test claim legislation is state mandated and not affected by the Legislature's actions making the original test claim legislation optional under Government Code section 17581.

### Conclusion

Based on the foregoing analysis, the Commission approves this test claim and concludes that Penal Code section 13701, subdivision (b), as amended by Chapter 246, Statutes of 1995, constitutes a reimbursable state mandated program upon local agencies pursuant to section 6, article XIII B of the California Constitution, by requiring the development, adoption and implementation of arrest policies for domestic violence offenders with the input of domestic violence agencies.

<sup>6</sup> See Statement of Decision, January 22, 1987, CSM-4222, filed by the Madera Police Department, a copy of which is attached as Exhibit F.

<sup>7</sup> It should be noted, however, that if the test claim legislation simply added new requirements to a previous, underlying state mandated program made optional by the Legislature under section 17581, the test claim legislation would not be state mandated. Under these circumstances, new requirements under the test claim legislation would be directly merged and connected to an optional or suspended program, i.e., a program not state mandated upon local agencies. (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 832 and 836, *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818, *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62.)

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of:

County of Los Angeles,

Claimant

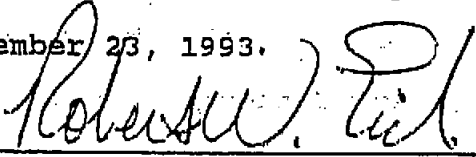
No. CSM-4426  
Penal Code Section 264.2  
Subdivisions (b)(1) and (b)(2)  
Penal Code Section 13701  
Chapter 999, Statutes of 1991  
Chapter 224, Statutes of 1992  
Rape Victims Counseling  
Center Notice

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on September 23, 1993.

IT IS SO ORDERED September 23, 1993.

  
Robert W. Eich, Executive Director  
Commission on State Mandates

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of: )

County of Los Angeles, )

Claimant )

No. CSM-4426  
Penal Code Section 264.2,  
Subdivisions (b)(1) and (b)(2)  
Penal Code Section 13701  
Chapter 999, Statutes of 1991  
Chapter 224, Statutes of 1992  
Rape Victims Counseling  
Center Notice

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on July 22, 1993, in Sacramento, California, during a regularly scheduled hearing.

Mr. Leonard Kaye, representing the County of Los Angeles, and Mr. Jim Apps, representing the Department of Finance, introduced themselves.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do the provisions of Penal Code section 264.2, subdivisions (b)(1) and (b)(2), as added and amended by Chapter 999, Statutes of 1991

1 (Chapter 999/91) and Chapter 224, Statutes of 1992  
2 (Chapter 224/92), and Penal Code section 13701, as amended by  
3 Chapter 999/91, impose a new program or higher level of service in  
4 an existing program upon local agencies within the meaning of  
5 Government Code section 17514 and section 6, article XIII B of the  
6 California Constitution?

7  
8 BACKGROUND AND FINDINGS OF FACT

9  
10 The test claim was received by the Commission on December 29, 1991,  
11 from the County of Los Angeles.

12  
13 The elements for filing a test claim, as specified in section 1183  
14 of Title 2 of the California Code of Regulations, were satisfied.

15  
16 The County of Los Angeles alleged that the provisions of the  
17 Penal Code referenced in its test claim impose a reimbursable state  
18 mandated program by requiring local law enforcement agencies to  
19 notify the local rape victim counseling center when the victim is  
20 transported to a hospital for examination; upon a request from the  
21 hospital, to verify whether the local rape victim counseling center  
22 has been notified, to provide and revise the "Victims of Domestic  
23 Violence" card by adding information to assist rape victims.

24  
25 The Department of Finance (DOF) recommended the Commission find  
26 that the statutory provisions for local law enforcement agencies to  
27 notify the local rape victim counseling center on behalf of an  
28 alleged rape victim is a reimbursable state mandated program.

1 However, the DOF indicated that Penal Code section 264.2,  
2 subdivision (b)(2), pertaining to verification by the local law  
3 enforcement agency as to whether the rape victim counseling center  
4 was notified, does not contain a reimbursable state mandated  
5 program.

6  
7 The Office of Criminal Justice Planning (OCJP) recommended that the  
8 Commission find that Penal Code section 264.2, subdivision (b)(2),  
9 does contain a reimbursable state mandated program. The OCJP  
10 stated that prior to subdivision (b)(2), there was no requirement  
11 upon law enforcement to respond to hospital requests. The only  
12 permissive provision is applicable to hospitals and if a hospital  
13 exercises its option to request verification, a law enforcement  
14 officer or agency must provide the information as to whether the  
15 rape victim counseling center was notified.

16  
17 With respect to subdivision (b)(1) of Penal Code section 264.2, as  
18 added by Chapter 999/91 and amended by Chapter 224/92, the  
19 Commission observed that a law enforcement officer, or his or her  
20 agency, must immediately notify the local rape victim counseling  
21 center whenever a victim of an alleged rape was transported to a  
22 hospital for examination and the victim approves of that  
23 notification.

24  
25 The Commission found that under prior law this notification  
26 requirement was not imposed on local law enforcement agencies or  
27

1 their officers.

2  
3 Regarding subdivision (b)(2) of Penal Code section 264.2, as added  
4 by Chapter 224/92, the Commission examined the statutory language  
5 and the related legislative history. The Commission found that  
6 that the only permissive provision in the statute applies to  
7 hospitals, and not to local law enforcement. In sum, if the  
8 hospital exercises its option to verify the notification, then the  
9 local law enforcement agency is mandated to respond to the  
10 hospital's request in a manner which provides the necessary  
11 information to verify the notification to a rape victim counseling  
12 center.

14 The Commission noted that while local enforcement may have been  
15 expected to respond to a hospital's request, it was not required to  
16 respond to such a request.

17  
18 Also, the Commission recognized that in view of Government Code  
19 section 17565, even if some local law enforcement agencies were  
20 providing the subject verification at its option before  
21 Chapter 224/92, after this law compliance was not optional or  
22 voluntary, but state mandated.

23  
24 With respect to Penal Code section 13701, as amended by  
25 Chapter 999/91, the Commission found that local law enforcement  
26 must now include the information set forth in Penal Code



1 section 13701, subdivision (1)(5), on the "Victims of Domestic  
2 Violence" card and that the card must be revised to reflect the new  
3 information.

4  
5 Moreover, the Commission found that this statute requires that the  
6 "Victims of Domestic Violence" card be furnished to a new group of  
7 alleged victims described under Penal Code section 261, 261.5, 262,  
8 286, 288a, or 289.

9  
10 APPLICABLE LAW RELEVANT TO THE DETERMINATION  
11 OF A REIMBURSABLE STATE MANDATED PROGRAM

12  
13 Government Code section 17500 and following, and section 6,  
14 article XIIIB of the California Constitution and related case law.

15  
16 CONCLUSION

17  
18 The Commission determines that it has the authority to decide this  
19 claim under the provisions of Government Code sections 17500  
20 and 17551, subdivision (a).

21  
22 The Commission concludes that the provisions of Penal Code  
23 section 264.2, subdivisions (b)(1) and (b)(2), as added and amended  
24 by Chapter 999/91 and Chapter 224/92, and Penal Code section 13701,  
25 as amended by Chapter 999/91, impose a new program or higher level  
26 of service in an existing program upon local agencies within the  
27

1 meaning of Government Code section 17514 and section 6,  
2 article XIIIIB of the California Constitution.

3  
4 The foregoing conclusion is subject to the following conditions:

5 The determination of a reimbursable state mandated  
6 program does not mean that all increased costs claimed  
7 will be reimbursed. Reimbursement, if any, is subject to  
8 Commission approval of parameters and guidelines for  
9 reimbursement of the mandated program; approval of a  
10 statewide cost estimate; a specific legislative  
11 appropriation for such purpose; a timely-filed claim for  
12 reimbursement; and subsequent review of the claim by the  
13 State Controller's Office.

14 If the statewide cost estimate for this mandate does not  
15 exceed one million dollars (\$1,000,000) during the first  
16 twelve (12) month period following the operative date of  
17 the mandate, the Commission shall certify such estimated  
18 amount to the State Controller's Office, and the State  
19 Controller shall receive, review, and pay claims from the  
20 State Mandates Claims Fund as claims are received.  
21 (Government Code section 17610.)  
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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim Of:

County of Los Angeles

Claimant

No. CSM-4426

Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2)  
Penal Code Section 13701  
Chapter 999, Statutes of 1991  
Chapter 224, Statutes of 1992

*Rape Victims Counseling Center Notice*

PARAMETERS AND GUIDELINES

The attached *amended* Parameters and Guidelines of the Commission on State Mandates are hereby adopted by the Commission on State Mandates in the above entitled matter.

IT IS SO ORDERED December 19, 1996.

*K. G. Stewart*

Kirk G. Stewart, Executive Director  
Commission on State Mandates

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**FILE COPY**

Hearing Date: December 19, 1996  
File Number: CSM-4426  
Staff: J. Mado-Eveland  
f:\mandates\4426\rapvctm1.doc

Adopted: May 26, 1994  
Revised: December 19, 1996

## Amended Parameters and Guidelines

Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2)

Penal Code Section 13701

Chapter 999, Statutes of 1991

Chapter 224, Statutes of 1992

### *Rape Victims Counseling Center Notice*

#### I. Summary of Mandate

The provisions of Penal Code section 264.2, subdivisions (b)(1) and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code Section 13701, as amended by Chapter 999, Statutes of 1991, require local law enforcement agencies to : reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape victim counseling center, notify the victim-selected center, and subject to the approval of the victim and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

#### II. Commission on State Mandates Decision

At its July 22, 1993, hearing, the Commission on State Mandates determined that the provisions of Penal Code section 264.2, subdivisions (b)(1), and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code section 13701, as amended by Chapter 999, Statutes of 1991, impose a reimbursable state mandated program by requiring local law enforcement agencies to notify the local rape victim counseling center when the victim is transported to a hospital for examination and the victim approves of that notification; subject to the approval of the victim and upon a request from the treating hospital, to verify whether the local rape victim counseling center has been notified; to revise the "Victims of Domestic Violence" card by adding information to assist rape victims, and to furnish a rape victim with a "Victims of Domestic Violence" card.

#### III. Eligible Claimants

Any city or county which incurs increased costs as a result of the subject state mandates is eligible to claim reimbursement of those costs.

#### IV. Period of Reimbursement

Chapter 999, Statutes of 1991, was approved by the Governor on October 13, 1991 and became operative on January 1, 1992 and Chapter 224, Statutes of 1992, was approved by the Governor on July 14, 1992 and became effective operative on January 1, 1993.

card; record, file, and/or data-process state mandated information; and, provide hospital verification whether the local rape victim counseling center has been notified, upon the consent of the victim.

## VI. Claim Preparation and Submission

One-time costs and continuing costs that are reimbursable are limited to:

### A. Employee Salaries and Benefits

1. For one-time costs and reprinting costs described in part V, paragraph B, 2 (a), show the name of the employee involved, the classification of the employee, state mandated functions performed, number of hours devoted to the function, productive hourly rates and benefits.

2. For continuing costs, excluding reprinting costs described in part V, paragraph B, 2 (a), unit costs must be claimed for each specified victim, based upon the following standard times:

- a. 10 minutes - road officer's time related to the subject state mandates
- b. 4 minutes - clerical duties related to recording, filing, and/or data processing
- c. 2 minutes - dispatcher's time related to hospital verification

Each standard time is multiplied by the average productive hourly rate, including applicable indirect cost as specified in part VI, paragraph D herein, for road officers, clerical staff, and dispatchers assigned state mandated duties, and, the results totaled to obtain a reimbursable unit cost. Such reimbursable unit cost is then multiplied by the total number of reported incidents regarding alleged violations described in part V, paragraph B, 2 (b), above.

### B. Services, Equipment and Supplies

Allowed only for one-time costs and reprinting costs described in part V, paragraph B, 2 (a). Claimed expenditures must be identified with a direct cost reimbursable activity resulting from the subject state mandates. List the cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of the subject state mandates.

### C. Contract Services

Allowed only for one time costs and reprinting costs described in part V, paragraph B, 2 (a). List costs incurred for contract services for the subject state mandates. Contracting costs are reimbursable to the extent that the function performed requires special skills or knowledge that is not readily available from the claimant's staff. Use of contract services must be justified by the claimant.

### D. Allowable Overhead Cost

Allowed for one-time costs and for continuing costs. Cities and counties have the option of using 10 % of direct labor as indirect costs or preparing a departmental

**PARAMETERS & GUIDELINES**

Penal Code Section 264.1, Subdivisions (b)(1) and (b)(2)  
Penal Code Section 13701  
Chapter 999, Statutes of 1991  
Chapter 224, Statutes of 1992  
Rape Victims Counseling Center Notice

I. SUMMARY OF MANDATES

The provisions of Penal Code section 264.2, subdivisions (b)(1) and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code Section 13701, as amended by Chapter 999, Statutes of 1991, require local law enforcement agencies to: reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape victim counseling center, notify the victim-selected center, and subject to the approval of the victim and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

II. COMMISSION ON STATE MANDATES DECISION

At its July 22, 1993, hearing, the Commission on State Mandates determined that the provisions of Penal Code section 264.2, subdivisions (b)(1), and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code section 13701, as amended by Chapter 999, Statutes of 1991, impose a reimbursable state mandated program by requiring local law enforcement agencies to notify the local rape victim counseling center when the victim is transported to a hospital for examination and the victim approves of that notification; subject to the approval of the victim and upon a request from the treating hospital, to verify whether the local rape victim counseling center has been notified; to revise the "Victims of Domestic Violence" card by adding information to assist rape victims, and to furnish a rape victim with a "Victims of Domestic Violence" card.

### III. ELIGIBLE CLAIMANTS

Any city or county which incurs increased costs as a result of the subject state mandates is eligible to claim reimbursement of those costs.

### IV. PERIOD OF REIMBURSEMENT

Chapter 999, Statutes of 1991, was approved by the Governor on October 13, 1991 and became operative on January 1, 1992 and Chapter 224, Statutes of 1992, was approved by the Governor on July 14, 1992 and became effective operative on January 1, 1993.

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for the state subject mandates was filed by the County of Los Angeles on December 29, 1992. Therefore, costs incurred for Chapter 999, Statutes of 1991, on or after its operative date of January 1, 1992, and costs incurred for Chapter 224, Statutes of 1992, on or after its effective operative date of January 1, 1993, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(3), of the Government Code, all claims for reimbursement of cost shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

### V. REIMBURSABLE ACTIVITIES AND RELATED COSTS

#### A. Scope of Mandate

Local law enforcement agencies shall be reimbursed for the increased costs which they are required to incur to: reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local

rape counseling center, notify the victim-selected local rape counseling center, and subject to the victim's approval and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

B. For each eligible claimant, the following one-time costs and continuing costs are reimbursable:

1. Reimbursable One-Time Costs

- a. Costs of updating policies and procedures to conform with the special requirements of Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992.
- b. Costs of modifying existing record-keeping systems to provide reliable and timely retrieval of verification information required by Chapter 224, Statutes of 1992, but not to exceed \$2,000,

2. Reimbursable Continuing Costs

- a. Costs of reprinting the existing "Victims of Domestic Violence" card to add information, relating to rape victim services, required by Chapter 999, Statutes of 1991, but not to exceed one reprinting per fiscal year.
- b. Law enforcement's road officer, clerical, and dispatcher costs required to: request each victim's consent to notify a rape counseling center, each time alleged violation(s) include at least one violation of Penal Code section 261, 261.5, 262, 286, 288a, 289, alleged separately or in combination with other violations; furnish a rape victim with a "Victims of Domestic Violence" card; record, file, and/or data-process state mandated information; and, provide hospital verification whether the local rape victim counseling center has been notified, upon the consent of the victim.



VI. CLAIM PREPARATION AND SUBMISSION

One-time costs and continuing costs that are reimbursable are limited to:

A. Employee Salaries and Benefits

1. For one-time costs and reprinting costs described in part V, paragraph B, 2 (a), show the name of the employee involved, the classification of the employee, state mandated functions performed, number of hours devoted to the function,, productive hourly rates and benefits.
2. For continuing costs, excluding reprinting costs described in part V, paragraph B, 2 (a), unit costs must be claimed for each specified victim, based upon the following standard times:
  - a. 10 minutes - road officer's time related to the subject state mandates
  - b. 4 minutes - clerical's duties related to recording, filing, and/or data-processing
  - c. 2 minutes - dispatcher's time related to hospital verification

Each standard time is multiplied by the average productive hourly rate, including applicable indirect cost as specified in part VI, paragraph D herein, for road officers, clerical staff, and dispatchers assigned state mandated duties, and, the results totaled to obtain a reimbursable unit cost. Such reimbursable unit cost is then multiplied by the total number of reported incidents regarding alleged violations described in part V, paragraph B, 2 (b), above.

The standard times set forth herein shall remain in effect through June 30, 1996. For the reimbursement period following June 30, 1996, the Commission on State Mandates, at a public hearing, shall review these standard times and shall make any necessary revisions to the standard times set forth herein.

B. Services, Equipment and Supplies

Allowed only for one-time costs and reprinting costs described in part V, paragraph B, 2 (a). Claimed expenditures must be identified with a direct cost reimbursable activity resulting from the subject state mandates. List the cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of the subject state mandates.

C. Contract Services

Allowed only for one time costs and reprinting costs described in part V, paragraph B, 2 (a). List costs incurred for contract services for the subject state mandates. Contracting costs are reimbursable to the extent that the function performed requires special skills or knowledge that is not readily available from the claimant's staff. Use of contract services must be justified by the claimant.

D. Allowable Overhead Cost.

Allowed for one-time costs and for continuing costs, Cities and counties have the option of using 10% of direct labor as indirect costs or preparing a departmental Indirect Cost Rate Proposal. If the city or county elects to prepare an Indirect Cost Rate Proposal, the Proposal must be prepared in accordance with Office of Management and Budget Circular A-87 (OMB A-87).

VII. SUPPORTING DATA

For auditing purposes, all costs claimed shall be traceable to source documents and/or worksheets that show evidence of and validity of claimed costs. All documentation supporting such costs shall be made available to the State Controller or his agent, as may be requested, during the record retention period specified in Government Code section 17558.5, subdivision (a).

Government Code section 17558.5, subdivision (a), requires that all supporting source documents and worksheets must be kept on file not less than four years after the end of the calendar year in which the reimbursement claims is filed or last amended, unless no funds are appropriated for the program for the fiscal year for which the claim is made, in

which case, the four year retention period shall commence to run from the date of initial payment of the claim.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject statutes must be deducted from the costs claimed. In addition, reimbursements for the subject state mandates received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

IX. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

TELETYPE

■ Guidelines for Law Enforcement ■



POST.TPS.2004-02



SENATE JUDICIARY COMMITTEE  
Adam B. Schiff, Chairman  
1997-98 Regular Session

AB 2177  
Assembly Member Kuehl  
As Amended March 26, 1998  
Hearing Date: June 9, 1998  
Family and Penal Codes  
JMR:cjt

A  
B  
2  
1  
7  
7

SUBJECT

Domestic Violence Protective Orders

DESCRIPTION

This bill would enact provisions relating to domestic violence protective orders which are required to bring California into compliance with the federal Violence Against Women Act.

CHANGES TO EXISTING LAW

1. Existing federal law requires any protective order issued by a court of one state or Indian tribe to be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or Indian tribe. (18 U.S.C. Section 2265.)

Existing law provides that an out-of-state domestic violence protective or restraining order issued by a state, tribal, or territorial court shall be deemed valid if the issuing court had jurisdiction over the parties and matter. (Family Code Section 6380.5. All further references are to this code unless otherwise noted.)

Existing law limits the enforceability of domestic violence protective or restraining orders by providing that such orders shall only be enforced as if they were issued by a court of this state after entry into the Domestic Violence Protective Order Registry. (Section 6380.5.)

□

According to the author, this bill is necessary to facilitate the enforcement of protective orders issued by another state or jurisdiction, and to bring California into full compliance with the federal Violence Against Women Act (VAWA). VAWA requires all states to accord full faith and credit to all domestic violence protective orders issued by another state, tribe, or U.S. territory. (18 U.S.C. Section 2265.)

This bill is sponsored by the Governor's Office of Criminal Justice Planning and is the product of a three-day conference with teams representing twenty-four Native American Tribes, all fifty states, and all U.S. territories who sat down together to identify needed legislation to ensure that the holder of a domestic violence protective order would be protected in any state, tribe, or territory of the United States.

According to the author, this bill will ensure that foreign domestic violence protective orders will be enforced exactly the same way as protective orders issued in California.

Support: National Organization for Women

Opposition: None Known

#### HISTORY

Source: Governor's Office of Criminal Justice Planning

Related Pending Legislation: None Known

Prior Legislation: None Known

Prior Vote: Asm. Jud. 15-0; Asm. Appr. 21-0; Asm. Floor 70-0

\*\*\*\*\*

□

# DOMESTIC VIOLENCE INFORMATION

## 1. Summary of Chapters 1609/84 and 668/85

On November 20, 1986, the Commission on State Mandates determined that both Chapters 1609, Statutes of 1984 and Chapter 668, Statutes of 1985 contained state mandated costs that are reimbursed under Section 17561 of the Government Code.

Chapter 1609 added Title 5, commencing with Section 13700 to the Penal Code. These sections required all law enforcement agencies in the state to:

- Develop, adopt and implement written policies and standards for law enforcement officers' response to domestic violence calls by January 1, 1986. Existing and new local policies must be in writing and available to the public upon request and must include specific standards for a range of related activities.
- Develop an incident report form and to maintain records of all protection orders with respect to domestic violence incidents. This information must be made readily available to law enforcement officers responding to domestic violence related calls for assistance and to provide such information, on a monthly basis, to the Attorney General's Office.

Chapter 668 amended Section 13701 of the Penal Code to require that law enforcement officers provide specific written information to victims of domestic violence.

## 2. Eligible Claimants

Law enforcement agencies are eligible to claim reimbursement for costs of this mandated program.

## 3. Appropriations

Claims may only be filed with the State Controller's Office for programs that have been funded in the State Budget Act or in special legislation. To determine if current funding is available for this program, refer to the schedule "Appropriations for State Mandated Cost Programs" presented in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September of each year to city fiscal officers and county auditors.

## 4. Types of Claims

A claimant may file a reimbursement claim or an estimated claim as specified below. A reimbursement claim details the costs actually incurred for the previous fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

- A claim for reimbursement or an estimate must exceed \$200 per fiscal year. However, a county, as the fiscal agent for the special district, may submit a combined claim in excess of \$200 on behalf special districts within the county even if the individual district's claim does not exceed \$200. A combined claim must show the individual claim costs for each special district. Once a combined

claim is filed; all subsequent claims for the same mandate must be filed in the combined form.

#### A. Filing Deadline

Refer to paragraph 3 "Appropriations" to determine if the program is funded for the current fiscal year. If the answer is "yes," an estimated claim may be filed as follows:

- An estimated claim must be filed with the State Controller's Office postmarked by **November 30** of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims. After having received payment for an estimated claim, the claimant must file a reimbursement claim by **November 30** of the following fiscal year.

If your agency received payment for an estimated claim for the fiscal year in which costs are to be incurred, a reimbursement claim must be filed in the following fiscal year detailing the actual costs incurred. If your agency failed to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, your agency may file a reimbursement claim detailing the actual costs incurred for that fiscal year, provided there was an appropriation for the program for that fiscal year. This may be determined by referring to that fiscal year's "Annual Claiming Instructions for State Mandated Costs".

A reimbursement claim must be filed with the State Controller's Office postmarked by **November 30** following the fiscal year in which costs were incurred. If a claim is filed after the deadline but by **November 30** of the succeeding fiscal year, the approved claim will be reduced by a late penalty of 10% but not to exceed \$ 1,000. If the claim is filed more than one year after the deadline, the claim cannot be accepted.

#### 5. Reimbursable Components

The following costs associated with the development of a Domestic Violence Policy are reimbursable:

##### A. Development of an Information System

###### (1) Development of a System to Record Incoming Domestic Violence Calls:

Costs associated with the development of a system for recording all domestic violence related calls for assistance to include whether weapons are involved.

###### (2) Development of a Domestic Violence Incident Report Form:

Costs associated with the development of a Domestic Violence Incident Report form to record and report domestic violence related calls.

###### (3) Development of a Statement of Information: Costs incurred after January 1, 1986 for the preparation of a Statement of Information for victims of incidents of domestic violence.

###### (4) Development and Maintenance of a Protective Order System:

Costs for the establishment of a system to verify temporary restraining orders, stay-away orders, and proofs of service at the scene of any incidents of domestic violence. Also reimbursable are costs for the maintenance of all protection order records that restrain an individual from the home or other court defined areas who



has been accused of an illegal behavior and has applied to the court and been granted such order.

#### B. Responding to Domestic Violence Incidents

##### (1) Utilization of the System to Verify Court Orders:

Costs for the utilization of a system to verify temporary restraining orders, stay away orders, and proofs of service at the scene of any incidents of domestic violence.

#### C. Providing Information to Victims

Costs are reimbursable for activities related to furnishing to victims at the scene of a domestic violence incident with written information regarding legal options and available assistance and any necessary explanation of that information, or for providing such information via telephone when law enforcement response is not required.

- Costs for time spent by police officers, including but not limited to, responding to domestic violence calls, restoring order, investigation, etc., are not reimbursable, except for time spent which is related to activities in Items 5.2(a), 5.2(b) and 5.2(c).
- Completing Domestic Violence Incident Reports:

Costs of writing mandated reports that include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.

#### D. Reports to the Attorney General's Office

##### (1) Monthly Summary Reports to the State Attorney General:

Costs of monthly summary reports compiled by the local agency and submitted to the Attorney General's Office that show the total number of domestic violence calls received and the number of such cases involving weapons.

#### 6. Reimbursement Limitation

- Any offsetting savings or reimbursement the claimant received from any source, as a result to this mandate, must be deducted from the amount claimed.

#### 7. Claiming Forms and Instructions

The diagram entitled "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for form DV-1 and form DV-2, provided the format of the report and data fields contained within the report are identical to the claim forms included in this chapter. The claim forms provided in this chapter can be duplicated and used by the claimant to file an estimated or reimbursement claim. The State Controller's Office will revise the manual and claim forms as necessary.

##### A. Form DV-2, Component/Activity Cost Detail

This form is used to segregate the detail costs by claim component. In some mandates, specific reimbursable activities have been identified for each component. The expenses reported on this form must be supported by cost and time records.

Copies of supporting documentation as specified in these instructions must be submitted with the claims. All supporting documents must be retained for a period of not less than three years from the date of the final payment on the claim.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, as long as the direct labor costs are directly related to the cost of performing the mandate. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have their own ICRP for the program.

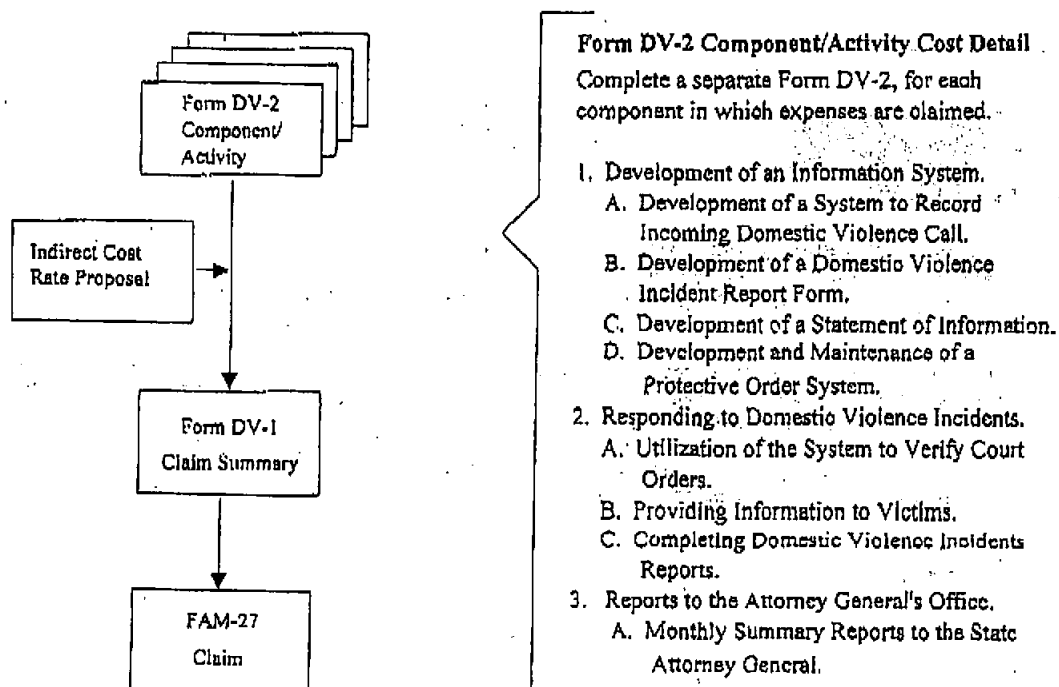
#### B. Form DV-1, Claim Summary

This form is used to summarize direct costs by component and compute allowable indirect costs for the mandate. The direct costs summarized on this form are derived from forms DV-2 and are carried forward to FAM-27.

#### C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the county. All applicable information from form DV-1 must be carried forward to this form in order for the State Controller's Office to process the claim for payment.

### ILLUSTRATION OF CLAIM FORMS



State Controller's Office

School Mandated Cost Manual

CLAIM FOR PAYMENT  
Pursuant to Government Code Section 17561  
DOMESTIC VIOLENCE INFORMATION

(19) Program Number 00015  
(20) Date File \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
(21) LRS Input \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

L  
A  
B  
E  
L  
  
H  
E  
R  
E

(01) Claimant Identification Number	Reimbursement Claim Data	
(02) Mailing Address	(22) DV-1, (03)	
Claimant Name	(23) DV-1, (04)(1)(d)	
County of Location	(24) DV-1, (04)(2)(d)	
Street Address or P. O. Box	(26) DV-1, (04)(3)(d)	
City State Zip Code	(26) DV-1, (06)	

Type of Claim	Estimated Claim	Reimbursement Claim	(27)
	(03) Estimated <input type="checkbox"/>	(08) Reimbursement <input type="checkbox"/>	(28)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(29)
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(30)

Fiscal Year of Cost	(08) 19__/19__	(12) 19__/19__	(31)
---------------------	----------------	----------------	------

Total Claimed Amount	(07)	(13)	(32)
----------------------	------	------	------

Less: 10% Late Penalty, but not to exceed \$1000 (if applicable)		(14)	(33)
------------------------------------------------------------------	--	------	------

Less: Estimated Claim Payment Received		(15)	(34)
----------------------------------------	--	------	------

Net Claimed Amount		(16)	(35)
--------------------	--	------	------

Due from State	(08)	(17)	(36)
----------------	------	------	------

Due to State		(18)	(37)
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(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985, set forth on the attached statements.

Signature of Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

(39) Name of Contact Person for Claim \_\_\_\_\_ Telephone Number ( ) \_\_\_\_\_ Ext. \_\_\_\_\_

October 22, 1998

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County Auditors

47 Day Claims for Suspended Mandates

Senate Bill 1855 (Chapter 780, Statutes of 1998) appropriated \$4,114,000 for reimbursement to local agencies of costs incurred for the period July 1, 1997, to August 16, 1997, for those state-mandated programs that were not suspended pursuant to section 17581 of the Government Code when there was no State Budget. Claiming instructions to claim costs are projected to be issued in January 1999, for the following programs:

- Local Coastal Plans, Ch. 1330/76
- Guardianship and Conservatorship Filings, Ch. 1357/76
- Filipino Employees Survey, Ch. 845/78
- Handicapped Voter Access, Ch. 494/79
- Deaf Teletype Equipment, Ch. 1032/80
- Involuntary Lien Notices, Ch. 1281/80
- Victim Statement--Minors, Ch. 332/81
- Court Audits and Proration of Fines, Ch. 980/84
- Domestic Violence Information, Ch. 1609/84
- Election Materials, Ch. 1042/85
- Property Taxation--Family Transfers, Ch. 48/87
- CPR Pocket Masks, Ch. 1334/87
- Personal Alarm Devices, Section 3401, Title 8, CCR

Title 8, CCR

Structural and Wildland Firefighter Safety Clothing and Equipment, Section 3401 to 3410,

Other New Claiming Instructions

The parameters and guidelines (P's & G's) for these programs have recently been adopted, or are pending adoption by the Commission on State Mandates. This office will issue instructions within 60 days of receiving the P's and G's from the Commission. Programs are as follows:

- Airport Land Use Commissions/Plans, Ch. 644/94
- Domestic Violence Arrest Policies and Standards, Ch. 246/95
- Sexually Violent Predators, Ch. 762/95
- Two-Way Traffic Signal Communication, Ch. 1297/94

County Auditors

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October 22, 1998

**PROGRAMS SUSPENDED FOR THE 1998-99 FISCAL YEAR**

Pursuant to Government Code section 17581, the following state mandated programs are identified in the 1998 State Budget Act (Ch 324/98), with a \$0 appropriation by the Legislature. The following state mandated programs have been suspended for the 1998-99 fiscal year, and no 1998-99 claim shall be filed:

- Ch. 238/74 Substandard Housing
- Ch. 1131/75 Mineral Resource Policies
- Ch. 1330/76 Local Coastal Program
- Ch. 1357/76 Guardianship and Conservatorship Filings
- Ch. 1401/76 Voter Registration Roll Purge
- Ch. 1123/77 Adult Felony Restitution
- Ch. 845/78 Filipino Employee Survey
- Ch. 815/79 Short-Doyle Case Management
- Ch. 494/79 Handicapped Voter Access
- Ch. 1032/80 Deaf Teletype Equipment
- Ch. 1281/80 Involuntary Lien Notices
- Ch. 332/81 Victims Statement-Minors
- Ch. 889/81 Lis Pendens
- Ch. 1013/81 Local Elections: Consolidations
- Ch. 1051/83 Senior Citizens Mobilehome Property Tax Deferral
- Ch. 980/84 Court Audits and Proration of Fines
- Ch. 1327/84 Short-Doyle Audits
- Ch. 1609/84 Domestic Violence Information
- Ch. 1042/85 Election Materials
- Ch. 1352/85 Residential Care Services
- Ch. 48/87 Property Taxation: Family Transfers
- Ch. 1334/87 CPR Pocket Masks
- Ch. 8/88 Democratic Presidential Delegates
- Title 8, CCR Personal Alarm Devices (Section 3401 (c))
- Title 8, CCR Structural & Wildland Firefighters Clothing and Equipment (Sections 3401-3410)

**AUDIT OF COSTS**

All claims submitted to the State Controller's Office are reviewed to determine if costs are related to the mandate, costs are reasonable and not excessive, and the claim was prepared in accordance with the claiming instructions. If any adjustments are made to a claim, a "Notice of Claim Adjustment" will be mailed within 30 days after payment of the claim. The notice will specify the claim component adjusted, the amount adjusted, and the reason for the adjustment.

On-site audits will be conducted by the State Controller's Office as deemed necessary. Accordingly, documentation to support actual costs claimed must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last

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Supreme Court of California, In Bank.

HOLLYWOOD CIRCLE, INC. (a Corporation),  
 Appellant,  
 v.  
 DEPARTMENT OF ALCOHOLIC BEVERAGE  
 CONTROL et al., Respondents.

L. A. 26184.

May 8, 1961.

Mandamus to compel Alcoholic Beverage Control Appeals Board to reinstate dismissed appeal from revocation of liquor license. The Superior Court of Los Angeles County, Ellsworth Meyer, J., denied the writ and the petitioner appealed. The Supreme Court, Traynor, J., held that Alcoholic Beverage Control Appeals Board's dismissal of appeal from revocation of on-sale liquor license, on ground that it was not timely, was not void even if erroneous and was res judicata.

Affirmed.

Schauer and McComb, JJ., dissented.

Opinion, 9 Cal.Rptr. 153, vacated.

West Headnotes

[1] Judgment ⇨552  
 228k552 Most Cited Cases

An act that may be in excess of jurisdiction so as to justify review by prerogative writ will nevertheless be res judicata if court had jurisdiction over subject and parties.

[2] Courts ⇨17  
 106k17 Most Cited Cases

Jurisdiction over the subject, being power to hear and determine, implies power to decide a question wrong as well as right.

[3] Judgment ⇨540  
 228k540 Most Cited Cases

The doctrine of res judicata is based upon sound policy of limiting litigation by preventing party who had one fair trial on issue from again drawing it into controversy.

[4] Administrative Law and Procedure ⇨501  
 15Ak501 Most Cited Cases

Greater flexibility is required in applying doctrine of res judicata to administrative determinations than to court decisions.

[5] Administrative Law and Procedure ⇨501  
 15Ak501 Most Cited Cases

Traditional principle of res judicata as developed in judicial system should be fully applicable to some administrative action and not applicable to other administrative action, and much administrative action should be subject to a qualified or relaxed set of rules concerning res judicata.

[6] Administrative Law and Procedure ⇨501  
 15Ak501 Most Cited Cases

Doctrine of res judicata is not applied when decision of administrative agency is made pursuant to rule-making powers or legislature intended that agency should exercise continuing jurisdiction with power to modify orders to conform to changing conditions.

[7] Administrative Law and Procedure ⇨501  
 15Ak501 Most Cited Cases

Doctrine of res judicata applies to decision of administrative agency in purely judicial function of reviewing another agency's decision to determine whether it conforms to law and is supported by

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substantial evidence, unless statute creating the agency authorizes it to reconsider case. West's Ann.Bus. & Prof.Code, § 23084.

[8] Intoxicating Liquors ⇨108.10(1)  
 223k108.10(1) Most Cited Cases  
 (Formerly 223k108(10))

Alcoholic Beverage Control Appeals Board's dismissal of appeal from revocation of on-sale liquor license, on ground that it was not timely, was not void even if erroneous and was res judicata. West's Ann.Bus. & Prof.Code, § 23090; West's Ann.Code Civ.Proc. § 1013; West's Ann.Gov.Code, § 11522.

[9] Judgment ⇨552  
 228k552 Most Cited Cases  
 (Formerly 227k552)

Doctrine of res judicata applies to judgments on merits in mandamus.

[10] Judgment ⇨552  
 228k552 Most Cited Cases

Determination in mandate proceeding, that dismissal of appeal from revocation of liquor license as untimely was proper, barred further inquiry into that question, though Supreme Court subsequently disapproved holding in that case. \*\*\*105 \*\*713 \*729 Rosenthal & Rosenthal and Allen M. Rosenthal, Los Angeles, for appellant.

Stanley Mosk, Atty. Gen., and Warren H. Deering, Deputy Atty. Gen., for respondents.

TRAYNOR, Justice.

In 1955 the Department of Alcoholic Beverage Control initiated proceedings for the revocation of petitioner's 'on-sale liquor license.' Petitioner was charged \*730 with a violation of section 25601 of the Business and Professions Code, [FN1] and after a hearing the department revoked the license. Petitioner attempted to appeal the department's decision to the Alcoholic Beverage Control Appeals Board. The board dismissed the appeal on the ground that it was not timely. Petitioner then

sought a writ of mandate to compel the board to consider the appeal.

FN1. 'Every licensee, or agent or employee of a licensee, who keeps, permits to be used, or suffers to be used, in conjunction with a licensed premises, any disorderly house or place in which people abide or to which people resort, to the disturbance of the neighborhood, or in which people abide or to which people resort for purposes which are injurious to the public morals, health, convenience, or safety, is guilty of a misdemeanor.'

Under section 24200 of the Business and Professions Code the violation of section 25601 is a ground for suspension or revocation of a liquor license.

In the petition for the writ petitioner contended that section 1013 of the Code of Civil Procedure [FN2] applies to appeals to the board and that the appeal was therefore timely. The superior court denied the writ, and the District Court of Appeal affirmed. *Hollywood Circle, Inc. v. Dept. Alcoholic Bev. Control*, 153 Cal.App.2d 523, 527, 314 P.2d 1007. We denied a petition for hearing, and the United States Supreme Court denied certiorari, 356 U.S. 902, 78 S.Ct. 562, 2 L.Ed.2d 580.

FN2. \* \* \* service by mail \* \* \* is complete at the time of the deposit (in a mail box), but if, within a given number of days after such service, a right may be exercised, or an act is to be done by the adverse party, the time within which such right may be exercised or act be done, is extended one day, together with one day additional for every full 100 miles distance between the place of deposit and the place of address \* \* \*

In 1956, section 23081 of the Business and Professions Code provided that: 'Within 40 days after the decision of the department is delivered or mailed to the parties, any party aggrieved by a final decision of the department may appeal to the board from such decision. \* \* \*'

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Petitioner mailed a notice of appeal 41 days after the decision of the department had been mailed. The notice of appeal was timely therefore only if section 1013 of the Code of Civil Procedure extended the time specified in section 23081.

One year later this court expressly disapproved the Hollywood Circle case and held that section 1013 does apply to appeals to administrative agencies such as the board. *Pesce v. Dept. Alcoholic Bev. Control*, 51 Cal.2d 310, 312-313, 333 P.2d 15. Petitioner then filed with the board an 'Application for Relief from Erroneous Dismissal of Appeal.' The board denied the application and in this proceeding in mandamus petitioner seeks to compel the board to reinstate its appeal. Petitioner \*\*\*106 \*\*714 contends that the dismissal of the appeal by the board was a void act and that neither \*731 section 23090 of the Business and Professions Code, [FN3] which prohibits reconsiderations and rehearings, nor the doctrine of res judicata, applies to void acts.

FN3: 'A final order of the board on appeal from a decision shall be in writing, and copies thereof shall be delivered to the parties personally or sent to them by registered mail. The order shall be final upon its delivery or mailing, and no reconsideration or rehearing shall be permitted.'

The Dismissal of the Appeal by the Appeals Board was Not a Void Act.

[1] In support of its contention, petitioner invokes cases holding that a dismissal of a valid appeal is an act in excess of jurisdiction, and may therefore be reviewed in a proceeding in mandamus. *Edwards v. Superior Court*, 159 Cal. 710, 713, 115 P. 649; cf. *Corrigan v. Superior Court*, 72 Cal.App. 383, 385, 236 P. 364. These cases, however, were concerned, not with the doctrine of res judicata, but with the propriety of review by extraordinary writ. See *Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 287, 288, 109 P.2d 942, 132 A.L.R. 715. An act that may be in excess of jurisdiction so as to

justify review by prerogative writ (*Abelleira v. District Court of Appeal*, supra, 17 Cal.2d at page 288, 109 P.2d at page 947; *Fortenbury v. Superior Court*, 16 Cal.2d 405, 407, 106 P.2d 411) will nevertheless be res judicata if the court had jurisdiction over the subject and the parties. *Signal Oil & Gas Co. v. Ashland Oil & Refining Co.*, 49 Cal.2d 764, 776-778, 322 P.2d 1.

[2] Petitioner does not contend that the board lacked jurisdiction over the parties. Nor can it be successfully contended that the board lacked jurisdiction over the subject. The subject was the procedure for filing an appeal to the board. Obviously the board had jurisdiction to determine whether a party followed the procedure prescribed for appearing before it. The board may have erred in its interpretation of the law prescribing the maximum time for filing an appeal, but "(j)urisdiction, (over the subject) being the power to hear and determine, implies power to decide a question wrong as well as right." *Signal Oil & Gas Co. v. Ashland Oil & Refining Co.*, supra, 49 Cal.2d 764, 778, 322 P.2d 1, 10.

The Board's Order Was Res Judicata.

[3][4][5] The doctrine of res judicata " \* \* \* is based upon the sound \* \* \* policy of limiting litigation by preventing a party who \* \* \* had one fair trial on an issue from again \*732 drawing it into controversy." *Bernhard v. Bank of America*, 19 Cal.2d 807, 811, 122 P.2d 892, 894. This policy can be as important to orderly administrative procedure as to orderly court procedure. Some administrative determinations, however, differ greatly from court decisions and greater flexibility is required in applying the doctrine of res judicata to them. (See *Groner and Sternstein*, *Res Judicata in Federal Administrative Law*, 39 Iowa L.Rev. 300, 302-305.) 'The key to a sound solution of problems of res judicata in administrative law is recognition that the traditional principal of res judicata as developed in the judicial system should be fully applicable to some administrative action, that the principle should not be applicable to other administrative action, and that much administrative action should be subject to a qualified or relaxed set of rules concerning res judicata.' 2 *Davis*, *Administrative Law*, 568; compare *Aylward v. State Board of Chiropractic Examiners*, 31 Cal.2d 833, 838, 192 P.2d 929 and

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*Empire Star Mines Co. v. California Employment Comm.*, 28 Cal.2d 33, 48, 168 P.2d 686 with *French v. Rishell*, 40 Cal.2d 477, 480, 254 P.2d 26 and *Goodman Bros. v. Superior Court*, 51 Cal.App.2d 297, 301, 124 P.2d 644; see *Parker, Administrative Res Judicata*, 40 ILL.Rev. 56; 29 Cal.L.rev. 741.

[6] The doctrine is not applied when the decision of the agency is made pursuant \*\*\*107 \*\*715 to its rule-making powers (*Olive Proration Program Committee, etc. v. Agricultural Prorate Comm.*, 17 Cal.2d 204, 208, 109 P.2d 918) or when " \* \* \* the legislature intended that the agency should exercise a continuing jurisdiction with power to modify or alter its orders to conform to changing conditions \* \* \* *Olive Proration Program Committee, etc. v. Agricultural Prorate Comm.*, supra, 17 Cal.2d at page 209, 109 P.2d at page 921. Likewise the public interest in preventing the practice of a profession by one not qualified may require a further review of the law applicable to a license to practice. See *Aylward v. State Board of Chiropractic Examiners*, 31 Cal.2d 833, 192 P.2d 929.

[7][8] The function of the administrative agency in the present case, however, is the purely judicial one of reviewing another agency's decision to determine whether that decision conforms to the law and is supported by substantial evidence. *Bus. & Prof.Code*, s 23084. The doctrine of res judicata applies to such a decision, unless the statute creating the agency authorizes it to reconsider the case. Since the board is prohibited from reconsidering or reopening a case after \*733 a copy of its decision has been mailed or delivered to the parties (*Bus. & Prof.Code*, s 23090, supra), its decision was res judicata. [FN4]

FN4. Administrative agencies often act in the dual capacity of tribunals and litigants. Since petitioner has not applied to the Department of Alcoholic Beverage Control pursuant to section 11522 of the Government Code for a reinstatement of its license we do not decide whether that agency as a litigant can waive the defense of res judicata and reconsider the correctness of the original decision

revoking petitioner's license.

[9][10] Moreover, we are not here concerned solely with the act of the board. Over four years ago petitioner sought a writ of mandate in the superior court and in that proceeding the interpretation of section 1013 of the Code of Civil Procedure and the validity of the action of the board was thoroughly litigated. The judgment denying the writ was affirmed on appeal and has now become final. Petitioner has had a full hearing on the merits of its case, three hearings on the issue of the timeliness of the appeal, and two denials of petitions for hearing on that issue. It is settled that the doctrine of res judicata applies to judgments on the merits in proceedings in mandamus. *Caminetti v. Board of Trustees*, 1 Cal.2d 354, 356, 34 P.2d 1021; *Price v. Sixth District Agricultural Ass'n*, 201 Cal. 502, 515, 258 P. 387; see *Napa Valley Electric Co. v. Board of Railroad Commissioners of California*, 251 U.S. 366, 372-373, 40 S.Ct. 174, 64 L.Ed. 310, '(A) final judgment or order is res judicata even though contrary to statute where the court has jurisdiction in the fundamental sense, i. e., of the subject matter and the parties;' *Pacific Mut. Life Ins. Co. of California v. McConnell*, 44 Cal.2d 715, 725, 285 P.2d 636, 641. The determination in the first-mandate proceeding that the dismissal of petitioner's appeal was proper therefore bars any further inquiry into that question. *Napa Valley Electric Co. v. Board of Railroad Commissioners of California*, supra, 251 U.S. 366, 372-373, 40 S.Ct. 174, 64 L.Ed. 310.

The judgment of the superior court denying the writ of mandate is affirmed.

GIBSON, C. J., and PETERS, WHITE and DOOLING, JJ., concur.

SCHAUER, Justice (dissenting).

I am in accord with the opinion authorized for the District Court of Appeal (reported at 9 Cal.Rptr. 153) by Justice Ashburn and concurred in by Presiding Justice Fox and Justice pro tempore \*734 Kincaid, and by reference adopt it as explanatory of

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the reasons why I cannot join my associates in affirming the judgment of the superior court.

Although Justice Ashburn's opinion is fully adequate and impelling to the conclusions reached, it, of course, was written before the opinion of my associates and, \*\*\*108 \*\*\*716 in view of their position, it appears proper to add emphasis to those facts which essentially distinguish this case from cases relied on by the majority.

Preliminarily it is to be noted that it is now, and at all pertinent times has been, provided in the Constitution of this state that "When any person aggrieved thereby appeals from a decision of the department \* \* \* revoking any license \* \* \* the (Appeals) board shall review the decision \* \* \*." (Const. art. XX, sec. 22; italics added.) Most important here is the fact that until the District Court of Appeal acted in the matter now at bench, no appellate tribunal, either administrative or judicial, had ever exercised jurisdiction over the appeal of plaintiff-appellant; i. e., that party had never been accorded its constitutionally granted right. Each and every tribunal which possessed potential constitutional authority to act had expressly refused to pass on the matter. Chronologically the events were as follows:

1. On March 22, 1956, the Department of Alcoholic Beverage Control revoked plaintiff's on-sale license.

2. Plaintiff filed timely notice of appeal to the Appeals Board.

3. The Appeals Board refused to exercise its jurisdiction; it did not review the decision; it neither affirmed nor reversed; it dismissed solely for asserted want of jurisdiction although as a matter of law on the undisputed facts it did not have jurisdiction to dismiss (see *City & County of San Francisco v. Superior Court* (1959), 53 Cal.2d 236, 243-244(2, 3), 1 Cal.Rptr. 158; *Abelleira v. District Court of Appeal* (1941), 17 Cal.2d 280, 288, 291(3, 4), 109 P.2d 942, 132 A.L.R. 715); it was mandatorily bound to review the decision. ("When any person \* \* \* appeals from a decision of the department \* \* \* the board shall review the decision \* \* \*." (Const. art. XX, sec. 22).)

4. Plaintiff sought relief in the superior court. That court declined to exercise jurisdiction to review; it sustained a demurrer to plaintiff's complaint without leave to amend, on the indisputably untenable theory that it had no jurisdiction to review the Appeals Board's dismissal of plaintiff's \*735 appeal because plaintiff had taken no (timely) appeal to the board. To repeat, the trial court shared with the Appeals Board the erroneous notions that no appeal had been taken to the Appeals Board, that by failing to appeal to that board plaintiff had failed to exhaust its administrative remedy and, hence, that the courts have no jurisdiction to review the proceeding. (*Hollywood Circle v. Dept. Alcoholic Bev. Control* (1957), 153 Cal.App.2d 523, 526(4), 314 P.2d 1007; hearing denied by Supreme Court, Schauer, J., dissenting.)

5. Plaintiff appealed and the District Court of Appeal, although recognizing the injustice of the matter, shared the view of the Appeals Board and the trial court that, for the admittedly untenable reason above stated, 'the courts have no jurisdiction to review the proceeding.' And, as above noted this (supreme) court, by a divided vote, denied a hearing. Obviously this court shared the same untenable view that it, as the lower courts had held, had no jurisdiction because no appeal had been taken to the Appeals Board.

Approximately one year later this court, in *Pesce v. Dept. Alcoholic Bev. Control* (1958), 51 Cal.2d 310, 312-313(1-3), 333 P.2d 15, Gibson, C. J., and Traynor, J., dissenting; see also *Silva v. Dept. Alcoholic Bev. Control* (1958), 51 Cal.2d 885, 886, 333 P.2d 18, with the same justices dissenting), expressly disapproved the holding of the earlier *Hollywood Circle* case and properly recognized that an appeal taken under the circumstances of both the *Hollywood Circle* and the *Pesce* cases is timely and that the Appeals Board has jurisdiction thereof. There was no relevant change in the Constitution or in any statute between the first *Hollywood Circle* case and the *Pesce* decision. The law was, then as it is now. And still *Hollywood Circle* has never had its day in court on appeal; it has never had the review granted \*\*\*717 \*\*\*109 to it by section 22 of article XX of the Constitution.

Constitutional jurisdiction of the subject matter of

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the res of a cause is not something which can be turned on or off by administrative agencies or courts. (See *In re Carmen's Petition* (D.C.1958), 165 F.Supp. 942, 949-951(6-8), affirmed *Dickson v. Carmen*, 9 Cir., 270 F.2d 809, certiorari denied 361 U.S. 934, 80 S.Ct. 375, 4 L.Ed.2d 355, rehearing denied 361 U.S. 973, 80 S.Ct. 585, 4 L.Ed.2d 553; see also *In re Byrnes* (1945), 26 Cal.2d 824, 827- 828(1-2), 161 P.2d 376.) When a timely notice of appeal has been given, \*736 the appellate tribunal acquires jurisdiction and that jurisdiction continues until it has been exercised or lawfully terminated; it is neither exercised nor terminated by the arbitrary dismissal of a timely appeal, on the mistaken assumption that no such appeal has been taken. Hence, plaintiff's appeal is still pending, and mandamus should issue to compel the Appeals Board to recognize and to exercise its jurisdiction thereof.

In the interests of justice as well as obedience to the law, I would reverse the judgment with directions that plaintiff be granted the relief sought.

McCOMB, J., concurs.

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END OF DOCUMENT

AB 2172

Page 1

Date of Hearing: April 21, 1998  
Chief Counsel: Judith M. Garvey

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Don Perata, Chair

AB 2172 (Sweeney) - As Introduced: February 19, 1998

SUMMARY : Adds clarifying language to the content of peace officer training courses and to the information distributed by peace officers to victims of domestic violence. Specifically, this bill :

- 1) Requires the Commission on Peace Officer Training (POST) course to include the techniques for recognizing the signs of domestic violence.
- 2) Adds to the list of responses required to be included in local law enforcement policies on domestic violence:
  - a) Transportation of a domestic violence victim to a hospital for treatment when necessary,
  - b) Police standbys for guaranteeing a domestic violence victim safe passage out of his or her residence, and
  - c) Information to a victim of domestic violence who has called for assistance, advising him or her of the names and locations of domestic violence counseling centers within the county and the telephone numbers of those centers.

EXISTING LAW :

- 1) Requires POST to implement a training course for law enforcement officers in the handling of domestic violence complaints and to develop guidelines for officer response to domestic violence. The course must include instruction on specified procedures and techniques. (Penal Code Section 13519.)
- 2) Requires every law enforcement agency in California to develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls. The policies are required to include standards for specified responses, including emergency assistance to victims, such as medical care, transportation to a shelter and police standbys for removing personal property, and notice to victims of specified information. (Penal Code Section 13701.)

COMMENTS :

1) Author's Statement . According to the author, "Domestic violence is one of the most serious problems faced by our society today. Consider the following:

□

AB 2172

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a) Over 225,000 domestic violence calls were made to law enforcement in 1996.

□

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b) California domestic violence shelters turn away over 90,000 women each year for lack of space.

c) Domestic violence is the leading cause of injury to women between ages 15 and 44 in the United States - more than car accidents, muggings, and rapes combined.

d) Every six hours a man batters a woman partner to death.

"It is essential that we take action to stop the cycle of abuse. That is why I introduced AB 2172, which protects victims of domestic violence from batterers.

"AB 2172 will ensure that victims safely escape their batterers by requiring law enforcement to provide, upon request of the victim, safe passage out of the victim's house. This bill also requires officers who respond to domestic violence calls to arrange for transportation of the victim to the hospital if the victim is in need of treatment.

"AB 2172 requires that peace officers be trained to recognize the signs of domestic violence. It further requires officers to provide the victim with information about local domestic violence counseling centers.

"AB 2172 is supported by the California chapter of the National Organization for Women."

2) Related Legislation . Both AB 1201 (Murray) and this bill contain a provision relating to the information a peace officer conveys to battered women. Both bills amend Penal Code Section 13701 and double-joining language will be needed before the bills are sent to the Governor.

a) AB 1201 (Murray) amends Penal Code Section 13701(c)(9)(G)(i) to provide that the names and phone numbers of, local county hotlines for, or both the phone numbers of and local county hotlines for local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Penal Code

Section 13837 and their 24-hour counseling service telephone numbers.

- b) This bill provides in Penal Code Section 13701(c)(9)(G)(H) that in any case of domestic violence where the victim has called for assistance, a "Victims of Domestic Violence" card shall include the names and locations of domestic violence counseling centers within the county and the telephone numbers of those centers.

Is it safe for battered women to have the address of counseling centers on the domestic violence card a batterer could access?

Should the location of counseling centers be deleted?

□

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3) Arguments in Support

a) California Correctional Peace Officers Association (CCPOA)

CCPOA writes, "As the state responds to the phenomena of domestic violence, it makes good sense for the front line, those sworn peace officers that must directly interact with individuals, including suspects and victims, to be appropriately trained to deal with various scenarios they would face. We note, your bill makes some important changes in the current law for the training of these officers.

"Additionally, we see wisdom in the mandated response that is authorized for officers to provide 'safe passage' to a domestic violence victim from his or her residence. We consider this change in the law to be just plain common sense and decency. In addition to improvements in the current training regime for officers, this is probably the most significant change in the law for peace officers to follow dealing with this particular crime."

- b) Crime Victims United of California states "AB 2172 would require: (1) additional training of law enforcement officers to recognize the signs of domestic violence; (2) provide victims safe passage out of the residence; and (3) provide victims a card that shall include the names, telephone numbers and locations of domestic violence counseling centers within the county.

"Our organization advocates any policy that would reduce the likelihood of physical threats and violence. The provisions in this bill take an active step toward prevention by training law enforcement officers to recognize potentially explosive situations and to prevent an even more serious event from occurring."

REGISTERED SUPPORT / OPPOSITION :

Support

Attorney General, State of California  
Doris Tate Crime Victims Bureau  
California Correctional Peace Officers Association  
Crime Victims United of California  
One Private Citizen

Opposition

Commission on Peace Officer Standards and Training

Analysis prepared by : Judith M. Garvey / apubs / (916) 445-3268





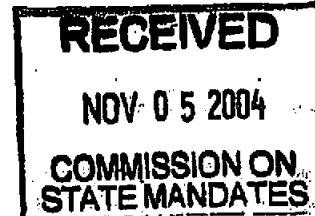


**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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J. TYLER McCAULEY  
AUDITOR-CONTROLLER

November 5, 2004



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

Dear Ms. Higashi:

**Los Angeles County Test Claim [CSM 98-TC-14]  
Domestic Violence Arrests and Victim Assistance**

We concur with Commission staff's findings that the referenced program currently imposes reimbursable costs on local agencies and, may, in 2005-06 and subsequent fiscal years, impose additional reimbursable costs in providing emergency assistance to domestic violence victims as noted on pages 23-24 of staff's analysis.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

*John Raimo*

FOR

J. Tyler McCauley  
Auditor-Controller

JTM:JN:LK

**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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TYLER McCALLEY  
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 5th day of November, 2004, I served the attached:

Documents: Review of Commission Staff Analysis, County of Los Angeles Test Claim CSM 98-TC-14, Domestic Violence Arrests and Victim Assistance, including a 1 page letter of J. Tyler McCauley dated 11/5/04, now pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date, Commission on State Mandates FAX as well as mail of originals.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

**PLEASE SEE ATTACHED MAILING LIST**

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

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

Executed this 5th day of November, 2004, at Los Angeles, California.

Hasmik Yaghobyan

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**Case Number: 98-TC-14**

**Issue: Domestic Violence Arrests and Victims Assistance**

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*Original in the mail*

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To	Paula M.		
Co. Dept.	CSM		
Phone #			
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