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

August 11, 2003

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

Dear Ms. Higashi:

Review of Commission's Staff Analysis
Reconsideration of Commission's Statement of Decision
County of Los Angeles Test Claim -- Penal Code Section 13730 as added by Chapter 1609, Statutes of 1984, and as amended by Chapter 965, Statutes of 1995; Family Code Section 6228, as added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

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,

for J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

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On July 22, 2003, Paula Higashi, Executive Director of the Commission on State Mandates [Commission] notified claimant County of Los Angeles [County] that "staff concludes that the statement of decision [adopted by the Commission on May 29, 2003] contains an error of law" [Staff Analysis, page 7].

According to Commission staff, "storing ... domestic violence incident reports and face sheets for three years" is now thought to be reimbursable [Staff Analysis, page 8], not the five year period stated in Commission's May 29, 2003 decision [Staff Analysis, page 3].

We disagree.

Before Family Code Section 6228 was added by Chapter 1022, Statutes of 1999, the County was not required to provide timely or ready access to stored domestic violence incident reports and face sheets. Indeed, providing domestic violence victims with timely or ready access to their stored domestic violence incident reports and face sheets was precisely the purpose of Section 6228 which provides that:

> " (a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211. [Emphasis added.]
>
> (b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim,

unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made. [Emphasis added.]

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

(d) Persons requesting copies under this section shall present state or local law enforcement with identification at the time a request is made.

(e) This section shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incidence report." [Emphasis added.]

Therefore, Family Code Section 6228, as added by Chapter 1022, Statutes of 1999, requires that victims of domestic violence be provided with timely or ready access to their stored domestic violence incident report and face sheet records for five years. Such access, under prior law, was not required --- not required at all.

The lack of timely or ready access to stored domestic violence incident reports and face sheets under prior law was addressed by Tracey Jensen, of the Family Law Section of the State Bar of California, in a March 4, 1999 letter about AB 403 [Chapter 1022, Statutes of 1999] to Larry Doyle, Chief Legislative Counsel [attached in Tab 18 of claimant's May 11, 2000 test claim filing with the Commission], on page 2, as follows:

"Law enforcement reports involving domestic violence are of great import to a victim seeking civil and/or criminal sanctions

> against the perpetrator. Such reports are also used by victims seeking citizenship through the federal Violence Against Women Act and compensation and other services through California's Victim-Witness program. Domestic violence survivors would receive such reports [under Chapter 1022, Statutes of 1999] at no cost and within a reasonable period of time whereas now they must obtain the reports on their own and pay any associated costs. Domestic violence survivors fleeing abuse should not have to incur the cost and inconvenience of obtaining such reports."

The public policy of expediting victims' reports so that "[d]omestic violence survivors fleeing abuse should not have to incur the cost and inconvenience of obtaining such reports" [quoted above] found clear expression in Family Code Section 6228.

Domestic violence incident reports and face sheets need not be requested right away by victims --- but need to be available at the convenience of victims for five years "from the date of completion of the domestic violence incident report" [Family Code section 6228(e)]. Under prior law, there was no requirement that victims be provided with timely or ready access to such reports or records.

No Prior Mandate to "Keep" Records

The County maintains that just prior to the enactment of Family Code Section 6228, as added by Chapter 1022, Statutes of 1999, there was no mandatory duty to store, archive or "keep" domestic violence incident report and face sheet records because there was no mandatory duty to prepare written domestic violence incident reports and face sheets. As explained by Commission staff, on page A19 of their December 5, 1997 analysis of the County's Domestic Violence Incident Reporting Test Claim, attached as Exhibit 1, "... it was optional for local law enforcement agencies to implement the domestic violence incident reporting activity... set forth in Penal Code Section 13730 pursuant to Government Code Section 17581 ...".[1]

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[1] Government Code section 17581 deals with "[i]mplementation by local agencies of statutes or executive orders requiring state reimbursement" and provides that:

Accordingly, under prior law, the storage of written domestic violence incident report and face sheet records was optional as the duty to prepare such written records was optional [pursuant to Government Code Section 17581]. Clearly, there can be no mandatory duty to store records which may not be created.

It should be noted that the preparation of written domestic violence incident report and face sheet records was first mandated in Penal Code Section 13730, as added by Chapter 1609, Statutes of 1984 [Commission's December 5, 1997 Staff Analysis, page A19, regarding the County's Domestic Violence Incident Reporting Test Claim, attached as Exhibit 1]. Moreover, the parameters and guidelines for Chapter 1609, Statutes of 1984 found the costs of "... writing ... mandated ... domestic violence reports..." to be reimbursable. [Staff Analysis, pages A18-A19, attached as Exhibit 1].

"(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 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.

(c) This section shall not apply to any state-mandated local program for the trial courts, as specified in Section 77203."

Therefore, when Chapter 1609, Statutes of 1984 is made optional under Government Code Section 17581, the mandatory duty to prepare written domestic violence incident report and face sheet records is made optional and, consequently, the duty to store such written records is optional.

Accordingly, as Chapter 1609, Statutes of 1984 was "optional" just prior to the enactment of Code Section 6228, as added by Chapter 1022, Statutes of 1999, there was no mandatory duty to store written domestic violence incident report and face sheet records.

Therefore, Family Code Section 6228, as added by Chapter 1022, Statutes of 1999, newly mandated ready access storage of written domestic violence incident report and face sheet records for five years. Under prior law, ready access storage of written domestic violence incident report and face sheet records was not mandated.

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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, statements of decision 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 review [attached].

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.

August 11, 2003; Los Angeles, CA — Leonard Kaye

Date and Place — Signature

Exhibit 1

Hearing Date: December 18, 1997
File Number: CSM-96-362-01
Commission Staff
f:\Mandates\cam\96-362-01\begin3.doc

ITEM 2

Staff Analysis of Test Claim – (Dated December 5, 1997)

Penal Code Sections 13519 and 13730
Chapter 965, Statutes of 1995

Domestic Violence Training and Incident Reporting

Executive Summary

Chapter 965, Statutes of 1995, amends Penal Code sections 13519 and 13730. These statutes address domestic violence training and incident reporting.

Part I. Domestic Violence Training

Introduction and Background

Penal Code section 13519 was originally added by Chapter 1609, Statutes of 1984. The original statute required the Commission on Peace Officer Standards and Training (POST) to develop and implement a basic course of instruction for the training of law enforcement officers in the handling of domestic violence complaints.[1] The original statute further provided that officers who received their basic training in domestic violence participate in supplemental training on domestic violence subjects. Thereafter, local law enforcement agencies were encouraged, but not required, to provide periodic updates and training on domestic violence as part of their advanced officer training program.

Subdivisions (b) and (c) of section 13519 of the original statute were the subject of a *previous test claim* filed by the City of Pasadena (CSM-4376). The City of Pasadena's test claim was *denied* by the Commission on February 28, 1991, on the grounds that the original statute:

(1) did *not* mandate local agencies to implement and pay for a domestic violence training program,

(2) did *not increase the minimum* basic training course hours nor the advanced officer training hours, and

(3) did *not* mandate local agencies to provide domestic violence training pursuant to the POST skills and knowledge module.

[1] POST was established in 1959 by the Legislature to implement and adopt rules of minimum standards relating to physical, mental and moral fitness, and training of law enforcement officers.

The Claim Legislation, Domestic Violence Training Update For Certain Officers

Section 13519, subdivision (e), as amended by the test claim statute, provides that all law enforcement officers below the rank of supervisor who are assigned to patrol duties and would normally respond to domestic violence calls shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed by POST. The statute further provides that the instruction shall be funded from existing resources available for training.

Claimant's Position and State Agencies' Position

The claimant, County of Los Angeles, contends that subdivision (e) creates a new reimbursable state mandated program, not imposed under prior law, by requiring certain law enforcement officers to complete an updated course on domestic violence every two years. The claimant further contends that the two hour domestic training course is a legislative mandate and creates costs mandated by the state never before realized by local agencies.

The Office of Criminal Justice and Planning states that the two hour course is legislatively mandated and for policy reasons should be reimbursable.

The Department of Finance contends that the Legislature intended that the domestic violence continuing education and training be funded from existing resources. The Department further contends that POST, who is charged with the responsibility of developing training standards for local law enforcement agencies, provided over $21 million in existing state funds for domestic violence training.

POST states that the officers in question must satisfy a continuing education requirement of at least 24 hours every two years. The author of the test claim statute was aware of this requirement and crafted subdivision (e) intending that the domestic violence update training become a statutorily required priority for inclusion within this 24 hour period. POST does not mandate that this two hour course be separate and apart from the long-standing 24 hour minimum. POST prepared and provides the course materials and a video tape for satisfying this two hour domestic violence update course.

Staff Analysis and Recommendation

Staff finds that the 1995 amendment to subdivision (e) of Penal Code section 13519, imposes a new activity or program upon local law enforcement agencies. Immediately prior to the effective date of the test claim statute, local law enforcement agencies were encouraged, but not required, to include periodic updates and training on domestic violence as part of their officer training program only. When subdivision (e) became operative, certain local law enforcement officers below the rank of supervisor are now required to complete an updated course of instruction on domestic violence every two years.

However, in view of the statutory language, which provides that the instruction in question be funded from existing resources, the Commission must continue its inquiry

to determine whether the program imposes costs mandated by the state upon local agencies.

Staff finds 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, staff finds 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 domestic violence training update certified by POST.

Accordingly, **staff recommends** that this portion of the test claim be denied.

However, if the Commission disagrees with the staff recommendation, the Commission would conclude that the test claim should be approved because the Legislature mandated a new domestic violence training course upon local agencies who employ the officers in question. As a result of this new state mandated program, local agencies and their officers no longer have the full discretion to satisfy the 24 hour minimum by selecting from the list of POST certified courses. Instead, they are now left with only choosing 22 hours out of the 24 hours.

Part II. Domestic Violence Incident Reporting

Introduction and Background

Penal Code section 13730 was originally added by Chapter 1609, Statutes of 1984. The original statute required local law enforcement agencies to develop and complete incident report forms regarding all domestic violence calls. Section 13730 was the subject of a previous test claim (CSM-4222) approved by the Commission on January 22, 1987.

Under the Budget Acts for fiscal years 1992/93 through 1997/98, the Legislature no longer mandated the completion of this domestic violence incident reporting program. Consequently, the incident reporting program was optional for law enforcement agencies during these fiscal years.

However, for a window period from July 1, 1997 through August 17, 1997, the domestic violence reporting program was state mandated because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

The Present Test Claim

Section 13730, subdivision (c), as amended by Chapter 964, Statutes of 1995, requires that the following information be *added* to the domestic violence incident report form: (1) whether the officer observed signs that the alleged abuser was under the influence of alcohol or a controlled substance; and (2) whether any law enforcement agency had previously responded to a domestic violence call at the same address.

Claimant's Position and State Agencies' Position

The County of Los Angeles alleges that new subdivision (c) imposes a reimbursable state mandated program upon local agencies by requiring local law enforcement agencies to revise and update domestic violence incident reports to include the two additional reporting requirements (whether the alleged abuser was under the influence of alcohol or controlled substances, and any prior domestic violence responses to the same address) imposed by the statute.

The Department of Finance agrees that Penal Code section 13730, subdivision (c), may have resulted in increased costs to local entities relative to the additional reporting requirements on the domestic violence incident report. The Department asserts that the Legislature's actions to make optional the original state mandated program (Penal Code section 13730 of Chapter 1609, Statutes of 1984 (CSM-4222)) has no impact upon this test claim.

Staff Analysis and Recommendation

Staff finds that subdivision (c) of section 13730 imposes a new program upon local agencies. Upon the effective date of the test claim legislation, local law enforcement agencies are now required to include in the incident report additional information regarding the use of alcohol and controlled substances by the alleged abuser, and any prior domestic violence responses to the same address.

However, while this additional information must be included on the domestic violence incident report, the performance of *this incident reporting activity is presently not state mandated.*

Following the Commission's decision of January 22, 1987, which approved Penal Code section 13730, Chapter 1609, Statutes of 1984, as a state mandated program, local agencies were reimbursed for developing and completing the incident report forms. These reimbursable activities are spelled out in the Commission's Parameters and Guidelines and the State Controller's Claiming Instructions.

Later, in the State Budget Acts of 1992/93 through 1997/98, the Legislature made optional the state mandated program under Chapter 1609, Statutes of 1984. In other words, if the completion of the incident report itself is not state mandated, then the new additional information to be included on the report, as described in the test claim statute, is likewise not state mandated.

On the other hand, if a local agency opts or elects to complete the incident report, then the additional information must be included on the report. But under this scenario, the completion of the incident report, along with the new additional information, is performed at the option of the local agency and not state mandated.

Staff concludes that the new additional information to the domestic incident violence 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 preceding paragraph, staff further concludes that for a 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 because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

Staff recommends that that the test claim be denied, provided however, that for the window period when the 1997/98 State Budget Act was not in effect, the test claim statute does impose a reimbursable state mandated program. The reimbursable activities include revising the domestic violence incident reporting form to include the new additional information required under the test claim statute and the completion of this information on the reporting form itself.

Also, staff recommends that the Statement of Decision and the Parameters and Guidelines include language to allow reimbursement for subsequent window periods

when future State Budget Acts make the incident reporting program optional, but effective after July 1, the start of a new fiscal year.

Claimant

County of Los Angeles

Chronology

12/27/97	Test Claim filed with the Commission on State Mandates by the County of Los Angeles (Exhibit A)
02/03/97	Request for extension of time for test claim response made by the Department of Finance
04/08/97	Response filed by the Department of Finance (Exhibit B)
05/10/97	Rebuttal filed by the County of Los Angeles to Department of Finance's response (Exhibit C)
07/07/97	Correction to Response filed by the Department of Finance (Exhibit D)
07/15/97	Draft Staff Analysis issued by Commission staff (Exhibit F)
07/26/97	Response filed by POST (Exhibit E)
09/04/97	Comments on Draft Staff Analysis filed by the Department of Finance (Exhibit G)
09/19/97	Further Comments on Staff Analysis filed by the County of Los Angeles (Exhibit H)
10/20/97	Staff Analysis of Test Claim dated October 20, 1997 (Exhibit M)
10/29/97	Response filed by the Office of Criminal Justice Planning (Exhibit N)
11/24/97	Supplemental Evidence and Findings filed by the County of Los Angeles (Exhibit O)

Claimant's Position

The claimant, County of Los Angeles, contends that the amendment of Penal Code sections 13519 and 13730 by Chapter 965, Statutes of 1995, imposes a reimbursable state mandated program or a higher level of service on an existing program upon local law enforcement agencies.

In particular, the claimant alleges that the amendment to Penal Code 13519, subdivision (e), creates a new program, not imposed under prior law, by requiring law enforcement officers below the rank of supervisor who are assigned to patrol duties and

would normally respond to domestic violence calls, to complete an updated course of domestic violence instruction every two years. Although the statute provides that the training and instruction "shall be funded from existing resources," the claimant alleges that there are no existing resources available for funding the program required by the statute. The claimant further alleges that the law enforcement officers who are required to attend the continuing education courses on domestic violence are entitled to compensation for instruction time, thus creating a reimbursable state mandated cost.

The claimant also alleges that the amendment to Penal Code section 13730, subdivision (c), imposes a reimbursable state mandated program upon local government by requiring local law enforcement agencies to revise and update domestic violence incident reporting policies and procedures to include two additional requirements imposed by the statute. The statute requires that local law enforcement agencies include in the incident report information regarding (1) the use of alcohol and controlled substances by the alleged abuser; and (2) whether local law enforcement agency made any prior responses to the same address.

Response from Department of Finance

The Department of Finance (DOF) disputes the contentions made by the test claimant regarding the amendment to Penal Code section 13519, subdivision (e) (domestic violence training). The DOF contends that the Legislature intended that the training "be funded from existing resources available for the training required by this section" and "not to increase the annual training costs of local government." DOF contends that existing resources exist since the Commission on Peace Officer Standards and Training (POST), which is also charged by section 13519 with the responsibility for developing training standards for local law enforcement agencies, provided over $21 million in state funds for training of local law enforcement personnel. Therefore, DOF requests that the Commission deny this portion of the test claim.

On the other hand, DOF agrees that Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995 (domestic violence incident reporting), may have resulted in increased costs to local entities relative to the additional reporting requirements on the use of alcohol, controlled substances, and prior responses to the same address. DOF also evaluated the effect of the Legislature's actions making the original state mandated program optional (Penal Code section 13730, enacted by Chapter 1609, Statutes of 1984) upon the 1995 test claim legislation and determined that this suspension of the original state mandated program has no impact on the merits of the subject claim.

Response from POST

POST notes that its standard requires officers to receive no fewer than 24 hours of continuing education training every two years. POST takes the position the author of the test claim statute was aware of this requirement and crafted subdivision (e) intending that the domestic violence update training become a statutorily required priority for inclusion within this 24 hours of training every two years.

Response from the Office of Criminal Justice Planning

The Office of Criminal Justice Planning contends that the claimant is entitled to reimbursement for the costs incurred to implement the requirements of Penal Code section 13519, subdivision (e) [Domestic Violence Training], and section 13730, subdivision (c) [Domestic Violence Incident Reporting]. With regard to the Domestic Violence Training, OCJP states the following:

> "It appears that the County of Los Angeles is forced by Penal Code section 13519 to either fund additional domestic violence training, or to reprioritize existing training funds. For policy reasons, we believe the County of Los Angeles should not be forced to abandon ongoing critical law enforcement training previously deemed necessary by local law enforcement authorities, in order to implement the requirements of Penal Code section 13519."

STAFF ANALYSIS

Part I. Domestic Violence Training (Pen. Code § 13519, subd. (e))

Introduction and Background

The Commission on Peace Officer Standards and Training (POST) is part of the Department of Justice and is governed and administered pursuant to Penal Code section 13500 and following. POST does not directly train law enforcement officers, but rather implements and adopts rules of minimum standards relating to physical, mental and moral fitness, and training of law enforcement officers. POST also certifies training programs.

Penal Code section 13519 was originally added by Chapter 1609, Statutes of 1984. The original statute required POST, in consultation with various experts, to develop and implement a basic course of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints. POST was obligated by the statute to include a number of procedures and techniques, as outlined in subdivision (b) of original section 13519, in the basic training course.

Subdivision (c) of original section 13519 required all law enforcement officers who received their basic training in domestic violence to participate in supplementary training on domestic violence subjects as prescribed and certified by POST. After completing the supplemental training, local law enforcement agencies were *encouraged, as part of their advanced officer training program*, to provide periodic updates and training on domestic violence. [2]

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[2] Penal Code section 13730 as originally added by Chapter 1609/84 provides, in pertinent part, the following:
"(a) The commission [POST] 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

Subdivisions (b) and (c) of original section 13519 were the subject of a previous test claim (CSM-4376) filed by the City of Pasadena and denied by the Commission on February 28, 1991.[3] The Commission determined that the original test claim did not constitute a reimbursable state mandated program within the meaning of section 6, article XIII B of the California Constitution for the following reasons:

- The original test claim did not require local agencies to implement a domestic violence training program for their law enforcement officers and to pay for the cost of such training;
- The original test claim did not increase the minimum basic course training hours nor the minimum advanced officer training hours and, consequently, no additional costs were incurred by local agencies; and
- The original test claim did not require local agencies to provide domestic violence training pursuant to the POST skills and knowledge module.

The Present Test Claim

The test claim legislation before the Commission pertains to Penal Code section 13519, subdivision (e), as amended by Chapter 965, Statutes of 1995. The analysis is presented in two parts.

Issue 1:

Does the domestic violence continuing education requirement upon law enforcement officers under Penal Code section 13519, subdivision (e),

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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 in direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training..."

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

"(c) (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 [POST] ...."

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

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

"(e) Forty thousand dollars ($40,000) is appropriated from the Peace Officers Training Fund....to support the travel per diem, and associated costs for *convening the necessary experts*."

[3] A copy of the Statement of Decision dated February 28, 1991, is attached as Exhibit I.

impose a new program or higher level of service upon local agencies under section 6 of article XIII B of the California Constitution[4]?

The 1995 amendment to subdivision (e) of Penal Code section 13519 provides:

> "(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* that *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."[5]
> (Emphasis added.)

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.[6]

First, subdivision (e) of section 13519 expressly obligates each law enforcement *officer* below the rank of supervisor, who is assigned to patrol duties and normally respond 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

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[4] 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) 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."

[5] The full text of the amended statute appears in Exhibit J.

[6] *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.

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.") Thus, staff finds 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.[7] In sum, the first requirement to determine whether the test claim legislation imposes a 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).) In sum, the second requirement to determine whether the test claim legislation imposes a state mandated program is satisfied.

Based on the foregoing, staff finds that section 13519, subdivision (e), imposes a new program upon local agencies.

Third, staff finds 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.[8]

Notwithstanding the foregoing, the test claim legislation provides statutory language that indicates that there may be no costs mandated by the state associated with attending and completing updated domestic violence training course. Accordingly, Commission's inquiry must continue.

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."

---

[7] *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.

[8] *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 832 and 836.

Given the above statutory language, the Commission must determine whether local law enforcement agencies incur any increased costs as a result of the test claim statute.

Government Code section 17514 defines *costs mandated by the state* as:

> ". . . . [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.

Documents Submitted by the Claimant

To determine whether there are any increased costs associated with the new program imposed by the test claim legislation under section 17514, staff requested additional information from the claimant. The claimant was asked to provide information on the number of continuing education hours required *immediately before and after* the operative date of the test claim legislation (i.e., January 1, 1996). The information requested was limited to training of non-supervisory officers who are assigned to patrol duties and who normally respond to domestic violence calls or incidents of domestic violence.

Documents Submitted on September 19, 1997

In response to staff's inquiry, the claimant submitted a response dated September 19, 1997 (Exhibit H) asserting that the updated domestic violence training course is extra. The claimant contends that it has provided to its officers POST certified training courses in excess of the required 24 hours of continuing education with no reimbursement from POST. The claimant further contends that it could not have financed the updated domestic violence training course by eliminating other POST training courses because these other courses were not funded by the state, but by the claimant. The claimant submitted the following documentation in support of its contention:

- A letter from POST dated August 17, 1997, listing 75 different POST certified skills and knowledge training modules, with reimbursement for only 6 courses;

- A memorandum from POST dated July 6, 1993 (before the enactment of the test claim statute) indicating that attendance of POST certified courses by local law enforcement officers no longer generates any form of salary reimbursement; and
- A notice from POST, dated July 25 1996, broadcasting its two hour "Domestic Violence" telecourse covering recent changes in the law over its satellite training network to local law enforcement agencies. The announcement ends with the statement "telecourse training is not reimbursable."

Documents Submitted on November 24, 1997

In addition, the claimant submitted a "Supplemental Evidence and Findings" on November 24, 1997 (Exhibit O), again asserting that the required domestic violence training is not included in the 24 hour continuing education requirement. The claimant submitted the following pertinent documents:

- A letter from the Los Angeles County Sheriff's Department dated November 21, 1997, identifying legislatively mandated courses to be presented to peace officers assigned to patrol duties;
- POST Bulletin Number 96-2, signed by Norman C. Boehm (Executive Director of POST) and dated February 22, 1996, recommending the domestic violence training focus on POST course materials. Bulletin 96-2, in pertinent part, states the following:

  "POST recommends the update training focus on: (1) recent changes to statutory law affecting law enforcement procedures (shown by underlined text in the [*Guidelines for Law Enforcement Response to Domestic Violence-1996*] publication), and (2) a refresher of the most critical curriculum topics in Domain #25 [*Training Specifications for the Regular Basic Course-1995*]."

  "Update training may be ***included*** in Advanced Officer Courses, Skills and Knowledge Modules, and other POST-certified courses intended for in-service officers. Law enforcement agencies may also elect to use non-POST-certified departmental training."

  "POST recommends that agencies consider ***making this training part of the officer's continuing professional training so that a separate schedule and tracking system do not have to be maintained.***" (Emphasis added.); and
- POST Administrative Manual, Procedure D-2, entitled "Advanced Officer Course" which identifies the topics included in the Advanced Officer Course as follows: New Laws; Recent Court Decisions and/or Search and Seizure Refresher; Officer Survival Techniques; New Concepts, Procedures, Technology; Discretionary Decision Making; and Civil Liability. The claimant notes that domestic violence is not specifically included in the topics.

Documents Submitted by State Agencies

DOF and POST disagree that the domestic violence updated training is extra. In its letter dated July 11, 1997 (Exhibit E), Glen Fine, Deputy Executive Director of POST, states the following:

> "Cities and counties that participate in the POST program do so voluntarily pursuant to adopted ordinances. They agree to abide by POST standards for selection and training. One POST standard is that officers receive no less than 24 hours of in-service training every two years."
>
> "It is our understanding that the author of SB 132 was aware of this requirement and crafted P.C. 13519(e) and (d) with this requirement in mind. *That is, the author's intent was that domestic violence update training become a statutorily required priority for inclusion within this 24 hours of training every two years"* [emphasis added.]

Analysis

Based on the evidence submitted by the parties, and the plain language of the test claim statute, staff finds that local agencies incur no increased costs mandated by the state in carrying out the two hour domestic violence updated 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 reveal 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.

Staff disagrees 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, staff finds 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, staff finds 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 domestic violence training update certified by POST.

Staff Recommendation
Staff recommends that this portion of the test claim be denied.

Part II: Domestic Violence Incident Reporting (Pen. Code, § 13730.)

Introduction and Background

Penal Code section 13730 was originally added by Chapter 1609/84. 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 1609/84 was the subject of a previous test claim (CSM-4222) approved by the Commission on January 22, 1987. The Parameters and Guidelines for Chapter 1609/84 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." (Stats. 1993, c.1230.)

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. Staff notes that a test claim has never been filed on Chapter 1230/93 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[9]. 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.)

The Present Test Claim

The test claim legislation currently before the Commission (Chapter 965/95) amended Penal Code section 13730, subdivision (c), by requiring local law enforcement agencies to include in the domestic violence incident report "*notations*" regarding the alleged abuser's use of alcohol and controlled substances, and prior responses to the same address. Subdivision (c), as amended by Chapter 965/95, 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

[9] The full text of Government Code section 17581, subdivisions (a) and (b), is provided on page 15 of this analysis.

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 wording reflects the amendment by Chapter 965/95)

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?

In order for a test claim statute to impose a reimbursable state mandated program, the statutory language must (1) 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.[10]

First, immediately prior to the test claim legislation, local law enforcement agencies were required by the original statute to develop and complete domestic violence incident reports. The original statute did not, however, require the local agencies 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 had been made to the same address.

The test claim legislation before the Commission 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

[10] *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.

residents generally.[11] Thus, the first requirement to determine whether a statute imposes a reimbursable state mandated program is satisfied.

Second, it was not until the 1995 amendment that the statute required local law enforcement agencies to determine and include this additional information on the incident report. Therefore, staff finds 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.

Finally, the question remains whether the test claim legislation is state mandated for purposes of reimbursement from the State Treasury.[12] As previously indicated, the original statute, which required the development and completion of a domestic violence incident report and was determined by the Commission to be a reimbursable state mandated 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?

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 XIIIB 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.

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[11] *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.

[12] *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 832 and 836.

"(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.[1] 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 1609/84 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. Both conditions set forth in section 17581 were met, i.e., (1) the Commission determined that Penal Code section 13730 of Chapter 1609/84 imposed a state mandated program and (2) the Legislature identified Chapter 1609/84 and appropriated zero funds. Thus, domestic violence incident report is optional and no longer state mandated. (Notwithstanding, staff points out 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.)

As indicated above, the test claim statute (Chapter 965/95) 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 must determine whether the additional requirements imposed by the test claim are also optional.

In the filing of September 19, 1997, the claimant contends that Chapter 965/95 is not included in the Legislature's suspension of the original statute. The claimant asserts that Chapters 1609/84 and 965/95 need to be addressed separately. The claimant further contends that Chapter 965/95 is not automatically made optional by association

[1] See Statement of Decision, January 22, 1987, CSM-4222, filed by the Madera Police Department, a copy of which is attached as Exhibit L.

with the original statute. Rather the determination of whether a statute is suspended is up to Legislature.

In the filing of November 24, 1997, the claimant made further contentions regarding this issue as follows:

- That the incident report mandated under Chapter 965/95 is "very different" than the one mandated in Chapter 1609/84. Under Chapter 965/95, the Legislature required detailed content requirements in the incident report, while under Chapter 1609/84, there are none.

- That staff overlooked Chapter 1230/93, which amended section 13730, subdivision (a), when concluding that the changes of Chapter 965/95 were minor compared to Chapter 1609/84.

- That staff's analysis is inconsistent with the Commission's Statement of Decision 96-362-02 (Domestic Violence Arrest Policies and Standards).

- That if Chapter 965/95 is viewed as optional, then its enactment is "meaningless and unnecessary".

Although the 1997/98 State Budget Act does not identify Chapter 965/95 as a suspended mandate, staff nevertheless finds that 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.* Staff agrees with the claimant that the additional notations required under the test claim statute constitute an additional activity. For this reason, staff finds 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), staff disagrees with the claimant's contention 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 new requirements imposed by Chapter 965/95 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 1609/84. [14]

[14] 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

While this additional information must 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 is not state mandated.

On the other hand, *if* a local agency 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 965/95 is not a meaningless and unnecessary law as suggested by the claimant.

Accordingly, staff concludes 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, for the limited period from July 1, 1997 through August 17, 1997, the 1997/98 State Budget Act was not in effect. Therefore, during this period, and for subsequent periods if there is no state budget in effect and the original incident reporting requirement is not suspended under Government Code section 17581, staff finds that subdivision (c) of section 13730 imposes a reimbursable state mandated program.

Staff Recommendation

Staff recommends the Commission determine 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 impose a reimbursable state mandated program for the limited period from July 1, 1997 through August 17, 1997, and for subsequent window periods

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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.

when future State Budget Acts make the incident reporting program optional, but effective after July 1, the start of a new fiscal year; and

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1996, 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.

Mailing List

Claim Number: 99-TC-08
Issue: Crime Victim's Domestic Violence Incident Reports

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Paul Minney,
Spector, Middleton, Young & Minne
7 Park Center Drive
Sacramento, California 95825

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

Ms. Annette Chinn,
Cost Recovery Systems
705-2 East Bidwell Street #294
Folsom, CA 95630

Ms. Cindy Sconce
Centration, Inc.
12150 Tributary Pint Drive, Suite 140
Gold River, California 95670

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhom Blvd., #307
Sacramento, CA 95842

Mr. Keith Gmeinder, Principal Analyst
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

Ms. Susan Geanacou, Senior Staff Attorney
Department of Finance
915 L Street, 11th Floor, Suite 1190
Sacramento, CA 95814

Mr. Steve Smith, CEO
Mandated Cost Systems
11130 Sun Center Dr., Suite 100
Rancho Cordova, California 95670

Mr. Jim Spano,
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, California 95814

Mr. Michael Harvey, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Mark Sigman, SB90 Coordinator
Auditor-Controller's Office
4080 Lemon Street, 3rd Floor
Riverside, CA 92501

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Co./Dept. CSM | Co.
Phone # | Phone # 213-974-8564
Fax # 916-445-0278 | Fax #

Mailing List

Claim Number: 99-TC-08
Issue: Crime Victim's Domestic Violence Incident Reports

Mr. J. Bradley Burgess
Public Resources Management Group
1380 Lead Hill Boulevard, Suite # 106
Roseville, CA 95661

Hasmik Yaghobyan