



J. TYLER McCAULEY
AUDITOR-CONTROLLER

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

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APR 17 2003

**COMMISSION ON
STATE MANDATES**

April 17, 2003

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-99-TC-08] Amendment
Crime Victims' Domestic Violence Incident Reports**

We submit and enclose herein an amendment to the subject test claim.

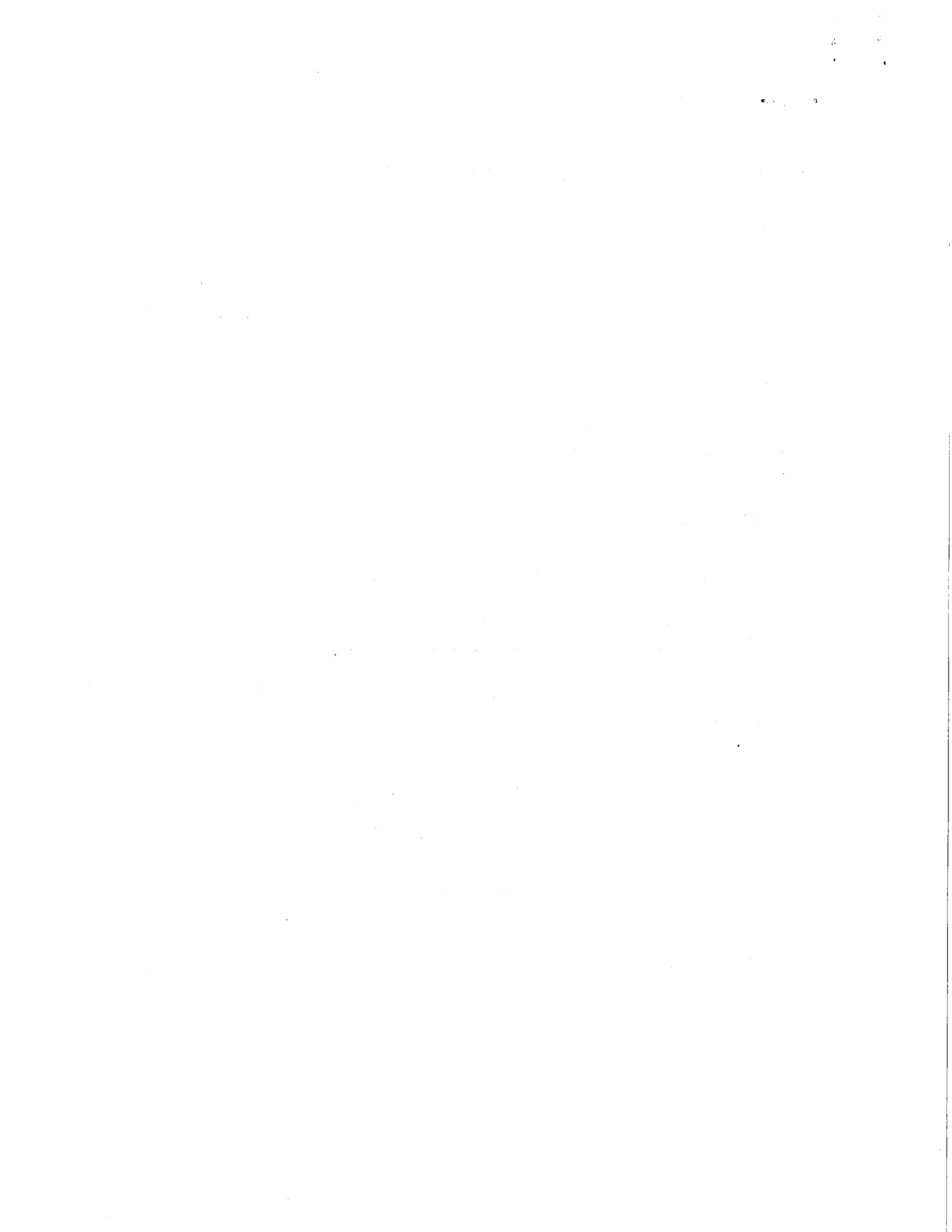
Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Tyler McCauley".

J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures



State of California
COMMISSION ON STATE MANDATES
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Sacramento, CA 95814
(916)323-3562
CSM 1 (12/88)

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COMMISSION ON STATE MANDATES
Claim No. <i>027018</i>

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
J. Tyler McCauley

Auditor-Controller

(213) 974-8301

Signature of Authorized Representative

Date

J. Tyler McCauley

4/17/03

**County of Los Angeles Test Claim Amendment [1]
Penal Code Section 13730 as Added and Amended by: Chapter 1609, Statutes
of 1984, Chapter 965, Statutes of 1985, Chapter 483, Statutes of 2001; Penal
Code Section 12028.5 as Added and Amended by Chapter 901, Statutes of 1984,
Chapters 830 and 833, Statutes of 2002; Family Code Section 6228 as Added
And Amended by Chapter 1022, Statutes of 1999, Chapter 377, Statutes of 2002
Crime Victims' Domestic Violence Incident Reports**

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COMMISSION ON
STATE MANDATES

[1] The County of Los Angeles requests that its "Crime Victims' Domestic Violence Incident Reports" test claim, filed on May 11, 2000 with the Commission on State Mandates, be amended to include related changes to Family Code Section 6228 and Penal Code Section 13730, the test claim legislation, as follows: Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, Section 12028.5 of the Penal Code as Added and Amended by Chapter 901, Statutes of 1984, Chapters 830 and 833, Statutes of 2002.

Page a

County of Los Angeles Test Claim Amendment
Penal Code Section 13730 as Added and Amended by: Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1985, Chapter 483, Statutes of 2001; Penal Code Section 12028.5 as Added and Amended by Chapter 901, Statutes of 1984, Chapters 830 and 833, Statutes of 2002; Family Code Section 6228 as Added and Amended by Chapter 1022, Statutes of 1999, Chapter 377, Statutes of 2002
Crime Victims' Domestic Violence Incident Reports

The County of Los Angeles requests that its "Crime Victims' Domestic Violence Incident Reports" test claim, filed on May 11, 2000 with the Commission on State Mandates, be amended to include related changes to Family Code Section 6228 and Penal Code Section 13730, the test claim legislation, as follows: Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, Section 12028.5 of the Penal Code as Added and Amended by Chapter 901, Statutes of 1984, Chapters 830 and 833, Statutes of 2002.

Chapter 483, Statutes of 2001 [attached as Exhibit 1], enacted on February 21, 2001, amends Section 13730 of the Penal Code [as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995 - the original test claim legislation] and imposes additional duties on local government which were not included in the original test claim legislation.

Section 12028.5 of the Penal Code details the duties referenced in implementing Section 13730(c)(3) of the Penal Code, as added by Chapter 483, Statutes of 2001, and, accordingly, is claimed herein. Section 12028.5's duties were first added to the Penal Code by Chapter 901, Statutes of 1984 [attached as Exhibit 2] on September 6, 1984. Subsequently, Section 12028.5 was amended on September 24, 2002 by both Chapter 830, Statutes of 2002 [attached as Exhibit 3] and Chapter 833, Statutes of 2002 [attached as Exhibit 4].

Chapter 377, Statutes of 2002 [attached as Exhibit 5], enacted on January 14, 2002, amends Section 6228 of the Family Code [as added by Chapter 1022, Statutes of 1999 - the original test claim legislation] and imposes additional duties on local government which were not included in the original test claim legislation.

Therefore, duties claimed herein are substantially related to the original test claim legislation. Accordingly, this amendment request should be granted.

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"¹.

New Section 13730 Duties

Chapter 483, Statutes of 2001, amends Section 13730 of the Penal Code [as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995 - the original test claim legislation] and imposes new duties on local government, not found in prior law. In particular, Chapter 483, Statutes of 2001 added Section 13730(c)(3) to mandate that:

“ ... The [domestic violence incident] report shall include at least all of the following ...

(3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether the inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5” [Emphasis added.]

Therefore, Chapter 483, Statutes of 2001 added Section 13730(c)(3) to imposes three mandatory duties upon local law enforcement agencies:

1. When “... necessary, for the protection of the peace officer or other persons present, [the mandatory duty] to inquire of the victim, the

¹ 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 6.

alleged abuser or both, whether a firearm or other deadly weapon was present at the location..."

2. The mandatory duty to report if an inquiry was made "... whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether the inquiry disclosed the presence of a firearm or other deadly weapon."

3. The mandatory duty that "... [a]ny firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5"

New Section 12028.5 Duties

Section 12028.5 of the Penal Code, as added by Chapter 901, Statutes of 1984 and amended by Chapters 830 and 833, Statutes of 2002, provides that:

"(a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking

custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 5 business days after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 5 business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

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

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a

nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the

firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section." [Emphasis added.]

The mandatory duties imposed on local law enforcement agencies in implementing Section 13730(c)(3)'s provision that "... [a]ny firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5" [emphasis added], are detailed in Section 12028.5 and include:

1. The duty requiring that a peace officer "... shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present." [Section 12028.5(b)]

2. The duty requiring that "... [u]pon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed

the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. [Section 12028.5(b)]

3. The duty requiring that the confiscated "... firearm or other deadly weapon shall be held [not less than] than 48 hours." [Section 12028.5(b)]

4. The duty requiring that "... the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession [as specified] 48 hours after the seizure or as soon thereafter as possible, but no later than 5 business days after the seizure." [Section 12028.5(b)]

5. The duty requiring that a "... peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located." [Section 12028.5(c)]

6. The duty requiring that "[a]ny firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership." [Section 12028.5(d)]

7. The duty requiring that "...[a]ny firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028." [Section 12028.5(e)]

8. The duty requiring that, "... [i]n those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned." [Section 12028.5(f)]

9. The duty requiring that "... the law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements." [Section 12028.5(g)]

10. The duty requiring local law enforcement agencies and the district attorney to participate in hearings "... if the person requests a hearing", in which case, "... the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party." [Section 12028.5(h)]

11. The duty requiring local law enforcement agencies and the district attorney to participate in hearings "... [i]f there is a petition for a second hearing, and, "...unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat," the

duty of local law enforcement agencies to "... return of the firearm or other deadly weapon" and, as specified, pay "... reasonable attorney's fees to the prevailing party." [Section 12028.5(j)]

Therefore, as amended herein, the County is now required to provide additional reimbursable Section 13730 services, not required under prior law, and substantially related to the original test claim legislation.

New Section 6228 Duties

Chapter 377, Statutes of 2002 [attached as Exhibit 5], enacted on January 14, 2002, amends Section 6228 of the Family Code [as added by Chapter 1022, Statutes of 1999 - the original test claim legislation] and imposes new duties on local government which were not included in the original test claim legislation. Specifically, Section 6228 now requires local law enforcement agencies to prepare and provide domestic violence incident reports for the "representatives" of domestic violence victims, as follows:

"(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, or to his or her representative if the victim is deceased, as defined in subdivision (g), upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.

(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 or his or her representative no later than 48 hours after being requested by the victim or his or her representative, unless the state or local law enforcement agency informs the victim or his or her representative 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 or his or her representative no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence or his or her representative no later than five working days after being requested by a victim or his or her representative, unless the state or local law enforcement agency informs the victim or his or her representative 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 or his or her representative no later than 10 working days after the request is made.

(d) Any person requesting copies under this section shall present state or local law enforcement with his or her identification, such as a current, valid driver's license, a state-issued identification card, or a passport and, if the person is a representative of the victim, a certified copy of the death certificate or other satisfactory evidence of the death of the victim 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.

(f) This section shall be known, and may be cited, as the Access to Domestic Violence Reports Act of 1999.

(g)(1) For purposes of this section, a representative of the victim means any of the following:

(A) The surviving spouse.

(B) A surviving child of the decedent who has attained 18 years of age.

(C) A domestic partner, as defined in subdivision (a) of Section 297.

(D) A surviving parent of the decedent.

(E) A surviving adult relative.

(F) The public administrator if one has been appointed.

(2) A representative of the victim does not include any person who has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, of the victim, or any person identified in the incident report face sheet as a suspect. Domestic violence incident report face sheets may not be provided to a representative of the victim unless the representative presents his or her identification, such as a current, valid driver's license, a state- issued identification card, or a passport and a certified copy of the death certificate or other satisfactory evidence of the death of the victim at the time of the request.” [Emphasis added.]

It should be noted that the Legislative Counsel, in its Digest to Chapter 377, Statutes of 2002 [attached as page 1 of Exhibit 5], amending Section 6228 of the Family Code, states that:

“This bill would also require state and local law enforcement agencies to provide those [domestic violence incident report] documents to a representative of the victim, as defined, if the victim is deceased. The bill would require any person requesting those documents to present his or her identification, as specified, and, if that person is a representative of the victim, a certified copy of the death certificate or other satisfactory evidence of the death of the victim. By imposing additional duties on local officials, the bill would create a state-mandated local program.”

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. Indeed, as previously discussed in the County's May 11, 2000 Test Claim on pages 2-8, the imposition of a fee for this type of mandated program is specifically prohibited.
- (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 the preparation and provision of domestic violence incident reports to victims of domestic violence.

Duty to Provide Requested Reports and Face Sheets is Not Excused

The County maintains that the duty to provide requested domestic violence incident reports and face sheets to domestic violence victims and their representatives under Family Code Section 6228 is not excused --- even if the general duty to prepare such reports and face sheets under Chapter 1609, Statutes of 1984 has been made optional under Government Code Section 17581².

² Government Code section 17581 deals with "[i]mplementation by local agencies of statutes or executive orders requiring state reimbursement" and provides that:

"(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.

As previously discussed, on page 10 herein, domestic violence victims and their representatives under Family Code Section 6228 must be provided requested domestic violence incident reports and face sheets. There are no exceptions or excuses for not doing so. Such victims and representatives have an unqualified right to obtain their domestic violence incident reports and face sheets when requested.

Accordingly, requested reports and face sheets need to be prepared in order to be provided. Otherwise, requested reports and face sheets would not be provided --- a result not permitted by the Legislature.

Family Code Section 6228 plainly requires that a domestic violence report and face sheet "... shall be made available...". There are no exceptions. The County has no alternative but to prepare-in-order-to-provide domestic violence reports and face sheets.

Commission staff disagree. They state, on page 10 of their March 6, 2003 analysis, that while "... Family Code section 6288 expressly requires local law enforcement agencies to ... provide one copy of all domestic violence face sheets ... [and] ... provide one copy of all domestic violence incident reports ..." to victims upon

(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.

(d) This section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution."

their request, there is no mandatory duty to prepare any domestic violence face sheets or incident reports.

The issue here is whether the County has any reasonable alternative but to prepare the domestic violence face sheets and incident reports that must, without exception, be provided victims. The issue of whether reimbursable state mandates "... also encompass situations where there is no reasonable alternative or no true choice but to participate in the state scheme" or not, is addressed in Department of Finance v. Commission on State Mandates, Kern High School District et al. [Case Number CO37645], attached as Exhibit 7.

Regarding duties like the duty to prepare-in-order-to-provide domestic violence face sheets and incident reports, pursuant to implementing Family Code section 6288, the Third Appellate District Court, in Department of Finance v. Commission on State Mandates, Kern High School District et al, on page 11 of Exhibit 7, states:

"We construe it [state mandates] to also encompass situations where there is no reasonable alternative or true choice but to participate in the state scheme."

We agree. Here, the state scheme requires that requested domestic violence incident reports and face sheets be provided to victims or their representatives --- without exception. We have no true choice but to prepare-in-order-to-provide domestic violence face sheets and incident reports pursuant to implementing Family Code section 6288.

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 of Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, Section 12028.5 of the Penal Code as added and amended by Chapter 901, Statutes of 1984, Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002 --- all statutes enacted on or after January 1, 1975.

Second, as noted in the declaration of Ms. Abram, attached hereto as Exhibit 8, and in the declaration of Ms. Watanabe, attached hereto as Exhibit 9, County costs are now being incurred during the County's 2002-03 fiscal year --- well after July 1, 1980. So the second requirement, that the increased costs claimed herein be incurred after July 1, 1980, is met. Also, the amount of such increased costs well exceeds the statutory minimum of \$1,000 a year. In this regard, Ms. Watanabe states, on page 1 of her declaration, that:

"I declare that the County of Los Angeles will incur costs well in excess of \$1,000 during the 2002-03 fiscal year to implement Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, to implement Section 12028.5 of the Penal Code as added and amended by Chapter 901, Statutes of 1984, Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002."

According to Ms. Abrams, on pages 2 through 5 of her declaration, the new duties claimed herein include:

"... on average, an additional 5 minutes to inquire of the victim whether a firearm or other deadly weapon is present, an additional 30 minutes to search for and obtain the weapon; an additional 5 minutes to report the results, and, where the weapon is confiscated pursuant to Penal Code Section 12028.5, an additional 90 minutes to perform the following duties:

1. The duty requiring that a peace officer "... shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present." [Section 12028.5(b)]
2. The duty requiring that "... [u]pon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. [Section 12028.5(b)]
3. The duty requiring that the confiscated "... firearm or other deadly weapon shall be held [not less than] than 48 hours." [Section 12028.5(b)]
4. The duty requiring that "... the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession [as specified] 48 hours after the seizure or as soon thereafter as possible, but no later than 5 business days after the seizure." [Section 12028.5(b)]
5. The duty requiring that a "... peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located." [Section 12028.5(c)]
6. The duty requiring that "[a]ny firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership." [Section 12028.5(d)]
7. The duty requiring that "...[a]ny firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined

in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028." [Section 12028.5(e)]

8. The duty requiring that, "... [i]n those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned." [Section 12028.5(f)]

9. The duty requiring that "... the law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements." [Section 12028.5(g)]

10. The duty requiring local law enforcement agencies and the district attorney to participate in hearings "... if the person requests a hearing", in which case, "... the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party." [Section 12028.5(h)]

11. The duty requiring local law enforcement agencies and the district attorney to participate in hearings “ ... [i]f there is a petition for a second hearing, and, “...unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat,” the duty of local law enforcement agencies to “... return of the firearm or other deadly weapon” and, as specified, pay “... reasonable attorney's fees to the prevailing party.” [Section 12028.5(j)] “

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, in “New Section 13730 Duties” [pages 2-3], “New Section 12028.5 Duties” [pages 3-9] and “New Section 6228 Duties” [pages 10-12], such duties are not found in prior law.

Therefore, reimbursement of the County’s “costs mandated by the State”, as claimed herein, is required.



COUNTY OF LOS ANGELES DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY
AUDITOR-CONTROLLER

County of Los Angeles Test Claim Amendment Penal Code Section 13730 as Added and Amended by: Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1985, Chapter 483, Statutes of 2001; Penal Code Section 12028.5 as Added and Amended by Chapter 901, Statutes of 1984, Chapters 830 and 833, Statutes of 2002; Family Code Section 6228 as Added and Amended by Chapter 1022, Statutes of 1999, Chapter 377, Statutes of 2002 Crime Victims' Domestic Violence Incident Reports

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.

4/17/03, Los Angeles, CA
Date and Place

Leonard Kaye

Will fax 26 pages 3 times = 78 pages

Post-it® Fax Note	7671	Date	4/17/03	# of pages	26/28
To	Paula Higashi	From	Leonard Kaye		
Co./Dept.	CEM	Co.			
Phone #		Phone #	213-924-8564		
Fax #	916-445-0278	Fax #			

CHAPTER 483
(Assembly Bill No. 469)

An act to amend Section 13730 of the Penal Code, relating to domestic violence.

[Approved by Governor October 3, 2001. Filed with Secretary of State October 4, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 469, Cohn. Domestic violence.

Existing law requires all law enforcement agencies to prepare a written incident report containing specified information about all domestic violence-related calls for assistance made to the department. Existing law also requires that the total number of domestic-violence calls received and the number of those cases involving weapons be compiled by the agency monthly and submitted to the Attorney General.

This bill would require a law enforcement officer who responds to the scene of a domestic violence-related incident to prepare a domestic violence incident report which includes a notation of whether he or she found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and whether the inquiry disclosed the presence of a firearm or other deadly weapon. This bill would also require officers to confiscate any firearm or deadly weapon discovered at the location of a domestic violence incident. Because this bill would require local law enforcement officers to perform additional duties, it would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates 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 13730 of the Penal Code is amended to read:

§ 13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

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

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic

*Italics indicate changes or additions. * * * indicate omissions.*

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violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. *The* report shall include at least *all* 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.

(3) *A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5.*

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Italics indicate changes or additions. * * * indicate omissions.

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the public.

(c) Participation in a program under this article shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this article shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program under this article.

4435. The board shall review the activities of the employee assistance program on a quarterly basis. As part of this evaluation, the board shall review files of all participants in the impairment program. Names of those pharmacists who entered the program voluntarily without the knowledge of the board shall remain confidential from the board except when monitoring by the board reveals misdiagnosis, case mismanagement, or noncompliance by the participant.

4436. All board records and records of the employee assistance program pertaining to the treatment of a pharmacist in the program shall be kept confidential and are not subject to discovery or subpoena.

4438. No member of the board or the contracting professional association or any volunteer intervenor shall be liable for any civil damages because of acts or omissions which may occur while acting in good faith pursuant to this article.

4439. This article shall be operative until January 1, 1988, and on that date is repealed, unless a later enacted statute deletes or extends that date. The board shall prepare a sunset review report of the program, and submit the report to the Legislature on or before March 31, 1987.

SEC. 2. The sum of twenty-five thousand dollars (\$25,000) is hereby appropriated from the Pharmacy Board Contingent Fund to the California State Board of Pharmacy to carry out the purposes of this act.

LIBRARY

CHAPTER 901

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

[Approved by Governor September 5, 1984. Filed with Secretary of State September 6, 1984.]

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

SECTION 1. Section 12028.5 is added to the Penal Code, to read:
12028.5. (a) As used in this section, the following words have the following meanings:

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

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himself, herself, or another.

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

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

(b) A sheriff, undersheriff, deputy sheriff, or police officer of a city at the scene of a domestic violence incident involving a threat to human life or a physical assault may take temporary custody of any firearm described in Section 12001 in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm and list any identification or serial number on the firearm. The receipt shall indicate where the firearm can be recovered and the date after which the owner or possessor can recover the firearm. No firearm shall be held less than 48 hours. If a firearm is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure.

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

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

SEC. 2. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

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CHAPTER 830

(Assembly Bill No. 2695)

An act to amend Sections 166, 12021, 12028.5, and 12028.7 of the Penal Code, relating to firearms.

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2695, Oropeza. Firearms.

Existing law provides that any willful and knowing violation of specified court orders involving family relations and domestic violence shall constitute contempt of court punishable by imprisonment for not more than one year.

This bill would make a clarifying change to this provision.

Existing law prohibits persons convicted of certain offenses from owning, possessing or exerting custody or control over a firearm, as specified. Violation of these provisions is a crime.

This bill would require the Attorney General, subject to available funding, to work with other specified entities to develop a protocol designed to facilitate the enforcement of restrictions on firearm ownership, as specified. The protocol would be required to be completed on or before January 1, 2005.

Existing law provides that, if a firearm or other deadly weapon seized by a law enforcement officer as a result of a domestic violence incident is not retained for specified reasons, the firearm or other weapon shall be made available to the owner or lawful possessor no later than 72 hours after the seizure.

This bill would provide that, if not retained, the firearm or other weapon shall be made available to the owner or lawful possessor no later than 5 business days after the seizure.

Existing law provides that, if a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to endanger the victim or the person reporting the threat, the agency shall, within 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other weapon should be returned. Existing law allows the agency to seek an extension of this period, for good cause, to no more than 60 days after the date of the seizure.

This bill would extend to 60 days the period for the law enforcement agency to initiate a petition, and would extend to 90 days the period of extension for good cause.

Existing law requires that a receipt be given to the possessor of a firearm or other deadly weapon when the firearm or other weapon is taken into custody by a law enforcement officer. Existing law specifies the information to be included in the receipt.

This bill would add to that information the time limit for the possessor to recover the firearm or other weapon.

This bill would make nonsubstantive corrections to these provisions.

This bill would incorporate changes to Section 12028.5 of the Penal Code proposed by SB 1807 that would become operative only if both bills are enacted and this bill is enacted after SB 1807.

*Italics indicate changes or additions. * * * indicate omissions.*

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

SECTION 1. Section 166 of the Penal Code is amended to read:

§ 166. (a) Except as provided in subdivisions (b), (c), and (d), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in *the* immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by any court, including orders pending trial.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b)(1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone *or* mail, or directly, and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars (\$5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c)(1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, *or that* is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) *** apply to the following court orders:

(A) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

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(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d)(1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Sections 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the provisions of subdivision (g) of Section 12021.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(e)(1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with the provisions of Section 1203.097 of the Penal Code.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars (\$1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse *** required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c) *** may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 2. Section 12021 of the Penal Code is amended to read:

§ 12021. (a)(1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, of any other state, government, or country, or of

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an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is added to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) subdivision (a) of Section 417 and who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a felony or of an offense enumerated in Section 12001.6, when that conviction results from certification by the juvenile court for prosecution as an adult in an adult court under Section 707 of the Welfare and Institutions Code, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(c)(1) Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 421, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of Section 12034, Section 12040, subdivision (b) of Section 12072, subdivision (a) of former Section 12100, Section 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in paragraph (3) of subdivision (g) of Section 12072, and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. However, the prohibition in this paragraph may be reduced, eliminated, or conditioned as provided in paragraph (2) or (3).

(2) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by this subdivision because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision no matter when the prior conviction occurred.

In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under this section, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability

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that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by this subdivision.

(3) Any person who is subject to the prohibition imposed by this subdivision because of a conviction of an offense prior to that offense being added to paragraph (1) may petition the court only once for relief from this prohibition. The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner. Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing. Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(A) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(B) Finds that the petitioner is not within a prohibited class as specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(C) Finds that the petitioner does not have a previous conviction under this subdivision, no matter when the prior conviction occurred.

In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, nothing in this paragraph shall be construed to require courts to grant relief to any particular petitioner.

(4) Law enforcement officials who enforce the prohibition specified in this subdivision against a person who has been granted relief pursuant to paragraph (2) or (3) shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in his or her possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

(d)(1) Any person who, as an express condition of probation, is prohibited or restricted from owning, possessing, controlling, receiving, or purchasing a firearm and who owns, or has in his or her possession or under his or her custody or control, any firearm but who is not subject to subdivision (a) or (c) is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms provided by the Department of Justice, shall notify the department of persons subject to this subdivision. The notice shall include a copy of the order of probation and a copy of any minute order or abstract reflecting the order and conditions of probation.

(2) For any person who is subject to subdivision (a), (b), or (c), the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this section from owning, possessing or having under his or her custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. Failure to provide the notice shall not be a defense to a violation of this section.

(e) Any person who (1) is alleged to have committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision

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(b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (1) and (2) is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, or any offense enumerated in paragraph (1) of subdivision (c) shall not own, or have in his or her possession or under his or her custody or control, any firearm until the age of 30 years. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this subdivision. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this subdivision may be used to determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g)(1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless a copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from owning or possessing or attempting to own or possess a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(3) Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall also state on its face the expiration date for relinquishment.

(4) If probation is granted upon conviction of a violation of this subdivision, the court shall impose probation consistent with the provisions of Section 1203.097.

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(h)(1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

(i) Subject to available funding, the Attorney General, working with the State Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of this section. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to this section or any other provision of law. The protocol shall be completed on or before January 1, 2005.

SEC. 3. Section 12028.5 of the Penal Code is amended to read:

§ 12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

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(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, *the time limit for recovery as required by this section*, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than *five business days* after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within *five business days* following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

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

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases where a law enforcement agency has reasonable cause to believe that

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the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the *date of seizure*, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an *ex parte* application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an *ex parte* request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 3.5. Section 12028.5 of the Penal Code is amended to read:

§ 12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

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- (B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.
- (C) A person with whom the respondent is having or has had a dating or engaged relationship.
- (D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).
- (E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than five business days after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within five business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

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

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the

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Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 90 days of the date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

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(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 4. Section 12028.7 of the Penal Code is amended to read:

§ 12028.7. (a) Except where a procedure is already provided by existing law, or other provisions of law apply, when a firearm is taken into custody by a law enforcement officer, the officer shall issue the person who possessed the firearm a receipt describing the firearm, and listing any serial number or other identification on the firearm.

(b) The receipt shall indicate where the firearm may be recovered, *any applicable time limit for recovery*, and the date after which the owner or possessor may recover the firearm, provided however, that no firearm shall be held less than 48 hours, and no more than *5 business days*. In any civil action or proceeding for the return of a firearm seized and not returned within *5 business days*, pursuant to this section, the court shall award reasonable attorney's fees to the prevailing party.

(c) Nothing in this section is intended to displace any existing law regarding the seizure or return of firearms.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and SB 1807. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after SB 1807, in which case Section 3 of this bill shall not become operative.

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CHAPTER 833

(Senate Bill No. 1807)

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

[Approved by Governor September 23, 2002. Filed with Secretary of State September 24, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1807, Chesbro. Firearms.

Existing law requires specified law enforcement officers who are at the scene of a domestic violence incident involving a threat to human life or physical assault to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search, as necessary for the protection of the peace officer or other persons present. Existing law details a procedure for return or disposal of these weapons, depending on specified circumstances.

This bill would also require a peace officer to take custody of a firearm or other deadly weapon in these circumstances if it were discovered pursuant to any other lawful search, and would subject a weapon so taken to this same procedure. By imposing new duties on peace officers, the bill would impose a state-mandated local program.

Ordinarily, existing law provides for the return of the weapon within a specified period. However, a law enforcement agency with reasonable cause to believe that the return of a firearm or other deadly weapon taken pursuant to these provisions would be likely to result in endangering the victim or the person reporting the assault or threat, may initiate a petition in superior court to determine if a firearm or other deadly weapon should be returned. Existing law provides that a court shall order the return of the firearm or other weapon unless shown by clear and convincing evidence that the return would result in endangering the victim or the person reporting the assault.

This bill would require an order returning the firearm or other weapon unless shown by a preponderance of the evidence that the return would result in endangering the victim or the person reporting the assault.

Under existing law, if, at this hearing, the court does not order the return of the weapon, the owner or person who had lawful possession of it may petition for a 2nd hearing within 12 months.

This bill would specify that, at the 2nd hearing, unless it is shown by clear and convincing evidence that the return of the weapon would endanger the victim or the person reporting the assault or threat, the court shall order the return of the weapon and award reasonable attorney's fees to the prevailing party.

Under existing law, weapons taken pursuant to these procedures must be returned, auctioned off or destroyed, and are subject to certain storage requirements.

By expanding the number of weapons to which these requirements apply, this bill would impose a state-mandated local program.

This bill would also make technical changes.

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.

Italics indicate changes or additions. * * * indicate omissions.

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.

This bill would incorporate changes to Section 12028.5 of the Penal Code proposed by AB 2695 that would become operative if both bills become effective on or before January 1, 2003, and this bill is enacted after AB 2695.

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

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

§ 12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the

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firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 72 hours after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 72 hours following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

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

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 30 days of the seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. The law enforcement agency may make an ex parte application stating good cause for an order extending the time to file a petition. Including any extension of time granted in response to an ex parte request, a petition must be filed within 60 days of the date of seizure of the firearm.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30

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days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party. If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 1.5. Section 12028.5 of the Penal Code is amended to read:

§ 12028.5. (a) As used in this section, the following definitions shall apply:

(1) "Abuse" means any of the following:

(A) Intentionally or recklessly to cause or attempt to cause bodily injury.

(B) Sexual assault.

(C) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.

(D) To molest, attack, strike, stalk, destroy personal property, or violate the terms of a domestic violence protective order issued pursuant to Part 4 (commencing with Section 6300) of Division 10 of the Family Code.

(2) "Domestic violence" means abuse perpetrated against any of the following persons:

(A) A spouse or former spouse.

(B) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.

(C) A person with whom the respondent is having or has had a dating or engagement relationship.

(D) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(E) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(F) Any other person related by consanguinity or affinity within the second degree.

(3) "Deadly weapon" means any weapon, the possession or concealed carrying of which is prohibited by Section 12020.

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of

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the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, a peace officer, as defined in subdivisions (a) and (b) of Section 830.32, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, *the time limit for recovery as required by this section*, and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (f), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession 48 hours after the seizure or as soon thereafter as possible, but no later than 5 business days after the seizure. In any civil action or proceeding for the return of firearms or ammunition or other deadly weapon seized by any state or local law enforcement agency and not returned within 5 business days following the initial seizure, except as provided in subdivision (d), the court shall allow reasonable attorney's fees to the prevailing party.

(c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located.

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

(e) Any firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028. Firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j), are not subject to destruction until the court issues a decision, and then only if the court does not order the return of the firearm or other deadly weapon to the owner.

(f) In those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be

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Will fax 26 pages 3 times = 78 pages

Date	4/17/03	# of pages	26/28
From	Learned Key		
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To	Pamela Higashi		
Co./Dept.	CSM		
Phone #			
Fax #			

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returned. The law enforcement agency may make an ex parte application stating cause for an order extending the time to file a petition. Including any extension granted in response to an ex parte request, a petition must be filed within 90 days of date of seizure of the firearm or other deadly weapon.

(g) The law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements.

(h) If the person requests a hearing, the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a *preponderance of the evidence* that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.

(i) If the person does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, the law enforcement agency may file a petition for an order of default and may dispose of the firearm or other deadly weapon as provided in Section 12028.

(j) If, at the hearing, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing. *If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party.* If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 12028.

(k) The law enforcement agency, or the individual law enforcement officer, shall not be liable for any act in the good faith exercise of this section.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 12028.5 of the Penal Code proposed by both this bill and AB 2695. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 12028.5 of the Penal Code, and (3) this bill is enacted after AB 2695, in which case Section 1 of this bill shall not become operative.

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.

Italics indicate changes or additions. * * * indicate omissions.

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CHAPTER 377

(Senate Bill No. 1265)

An act to amend Section 6228 of the Family Code, relating to domestic violence.

[Approved by Governor September 4, 2002. Filed with Secretary of State September 5, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1265, Alpert. Domestic violence incident report.

Existing law requires state and local law enforcement agencies to provide one copy of all domestic violence incident reports, one copy of all domestic violence incident report face sheets, or both, to a victim of domestic violence, upon request. Existing law requires persons requesting these copies to present state or local law enforcement with identification, at the time a request is made.

This bill would also require state and local law enforcement agencies to provide those documents to a representative of the victim, as defined, if the victim is deceased. The bill would require any person requesting those documents to present his or her identification, as specified, and, if that person is a representative of the victim, a certified copy of the death certificate or other satisfactory evidence of the death of the victim. By imposing additional duties on local officials, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates 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 6228 of the Family Code is amended to read:

§ 6228. (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, *or to his or her representative if the victim is deceased, as defined in subdivision (g)*, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.

(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 *or his or her representative* no later than 48 hours after being requested by the victim *or his or her representative*, unless the state or local law enforcement agency informs the victim *or his or her representative* 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 *or his or her representative* no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence *or his or her representative* no

Italics indicate changes or additions. * * * indicate omissions.

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later than five working days after being requested by a victim or his or her representative, unless the state or local law enforcement agency informs the victim or his or her representative 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 or his or her representative no later than 10 working days after the request is made.

(d) Any person requesting copies under this section shall present state or local law enforcement with his or her identification, such as a current, valid driver's license, a state-issued identification card, or a passport and, if the person is a representative of the victim, a certified copy of the death certificate or other satisfactory evidence of the death of the victim 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.

(f) This section shall be known, and may be cited, as the Access to Domestic Violence Reports Act of 1999.

(g)(1) For purposes of this section, a representative of the victim means any of the following:

(A) The surviving spouse.

(B) A surviving child of the decedent who has attained 18 years of age.

(C) A domestic partner, as defined in subdivision (a) of Section 297.

(D) A surviving parent of the decedent.

(E) A surviving adult relative.

(F) The public administrator if one has been appointed.

(2) A representative of the victim does not include any person who has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, of the victim, or any person identified in the incident report face sheet as a suspect. Domestic violence incident report face sheets may not be provided to a representative of the victim unless the representative presents his or her identification, such as a current, valid driver's license, a state-issued identification card, or a passport and a certified copy of the death certificate or other satisfactory evidence of the death of the victim at the time of the request.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7. (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

*Italics indicate changes or additions. * * * indicate omissions.*

STATE OF CALIFORNIA

GRAY D.

COMMISSION ON STATE MANDATES

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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,



Paula Higashi
Executive Director

c. Test Claim Amendment, and Draft Staff Analysis and Supporting Documents

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Court of Appeal, Third District, California.

**DEPARTMENT OF FINANCE, Plaintiff and
Appellant,**

v.

**COMMISSION ON STATE MANDATES,
Defendant and Respondent.**

**Kern High School District et al., Real Parties in
Interest and Respondents.**

No. C037645.

July 17, 2002.

122 Cal.Rptr.2d 447

167 Ed. Law Rep. 283, 2 Cal. Daily Op. Serv. 6362, 2002 Daily Journal D.A.R. 7992

Review Granted

Previously published at: 100 Cal.App.4th 243

(Cal.Const. art. 6, s 12; Cal. Rules of Court, Rules 28, 976, 977, 979)

(Cite as: 122 Cal.Rptr.2d 447)

Court of Appeal, Third District, California.

DEPARTMENT OF FINANCE, Plaintiff and Appellant,

v.

COMMISSION ON STATE MANDATES, Defendant and Respondent.

Kern High School District et al., Real Parties in Interest and Respondents.

No. C037645.

July 17, 2002.

Two school districts and one county filed a test claim with the Commission on State Mandates for a determination of whether two state statutes constituted reimbursable state mandates. The Commission determined they were. State, through its Department of Finance, brought an administrative mandate proceeding to review the Commission's decision. The Superior Court, Sacramento County, No. 00CS00866, Ronald B. Robie, J., denied petition. State appealed. The Court of Appeal, Davis, Acting P.J., held that: (1) the statutes concerned "programs" within meaning of state mandate laws; (2) statutes specified a "higher level of service for an existing program," within meaning of state mandate laws; but (3) to determine whether statutes created a "mandate," Commission was required to consider whether test claimants had a reasonable alternative or a true choice not to participate in the educational programs at issue, not whether they were legally compelled to do so; abrogating County of Contra Costa v. State of California, 177 Cal.App.3d 62, 222 Cal.Rptr. 750.

Reversed and remanded.

*448 Bill Lockyer, Attorney General, Manuel M. Medeiros, Senior Assistant Attorney General, *449 General, Andrea Lynn Hoch, Louis R. Mauro and Leslie R. Lopez, Deputy Attorneys General, for Plaintiff and Appellant.

Camille Shelton, Sacramento, for Defendant and Respondent.

Jo Anne Sawyerknoll, Sacramento, and Jose A. Gonzales, San Diego, for Real Party in Interest and Respondent San Diego Unified School District.

No appearance by Real Parties in Interest and Respondents Kern High School District and County of Santa Clara.

DAVIS, Acting P.J.

The question in this appeal is whether two state statutes--requiring local school site councils and advisory committees for certain educational programs to prepare and post an agenda for their meetings and to provide for public comment on agenda items--constitute a reimbursable state mandate under article XIII B, section 6 of California's Constitution. We agree with the trial court that these statutes specify a "higher level of service" under state mandate principles. [FN1] We also agree with the trial court that a state mandate is not limited to situations of legal compulsion. We construe state mandate as also extending to situations where the local governmental entity has no reasonable alternative to the state scheme, or has no true choice but to participate in it. The Commission on State Mandates (the Commission) did not consider these issues. We will therefore remand this matter to the Commission for it to determine whether the test claimants have a reasonable alternative or a true choice not to participate in the educational programs at issue, and thus a reasonable alternative to paying the higher costs associated with the higher level of service specified in the two challenged statutes. In light of this remand, we will reverse the trial court's judgment that upheld the Commission's decision finding a state mandate.

[FN1. California Constitution, article XIII B, section 6; Government Code section 17514.

BACKGROUND

[1] In 1978, California voters adopted Proposition 13, which added article XIII A (Article XIII A) to the state Constitution. This measure limits the power of state and local governments to tax. [FN2] In 1979, the state voters added article XIII B to the

122 Cal.Rptr.2d 447

167 Ed. Law Rep. 283, 2 Cal. Daily Op. Serv. 6362, 2002 Daily Journal D.A.R. 7992

Review Granted

Previously published at: 100 Cal.App.4th 243

(Cal.Const. art. 6, s 12; Cal. Rules of Court, Rules 28, 976, 977, 979)

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Constitution (Article XIII B). This measure limits the power of state and local governments to spend. [FN3] These two constitutional measures work in tandem; their goal is to protect California residents from excessive government taxation and spending. [FN4]

FN2. California Constitution, article XIII A; see *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 80, 61 Cal.Rptr.2d 134, 931 P.2d 312 (*County of San Diego*).

FN3. See *County of San Diego, supra*, 15 Cal.4th at page 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.

FN4. *County of San Diego, supra*, 15 Cal.4th at page 81, 61 Cal.Rptr.2d 134, 931 P.2d 312.

[2] Article XIII B includes section 6 (section 6 or Article XIII B, section 6), which sets forth the concept of reimbursable state mandates. With certain exceptions not relevant here, section 6 provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government ["local government" includes school districts], the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service...." [FN5] "Section 6 recognizes that articles XIII A and XIII B severely restrict the taxing and spending powers of local governments. [Citation.] 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" in light of Articles XIII A and XIII B. [FN6]

FN5. Article XIII B, section 6; see also Article XIII B, section 8, subdivision (d).

FN6. *County of San Diego, supra*, 15 Cal.4th at page 81, 61 Cal.Rptr.2d 134, 931

P.2d 312.

[3] A reimbursable state mandate does not equate to any "additional cost" that a state law may require a local government to bear. [FN7] The reimbursable mandate arises only when the state imposes on a local government a new program of governmental services or an increased level of service under an existing program. [FN8]

FN7. *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 55-57, 233 Cal.Rptr. 38, 729 P.2d 202 (*County of Los Angeles*); *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 277, 99 Cal.Rptr.2d 333 (*City of El Monte*).

FN8. *City of El Monte, supra*, 83 Cal.App.4th at page 277, 99 Cal.Rptr.2d 333; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835, 244 Cal.Rptr. 677, 750 P.2d 318 (*Lucia Mar*); see also *County of Los Angeles, supra*, 43 Cal.3d at page 56, 233 Cal.Rptr. 38, 729 P.2d 202.

In the Government Code, the Legislature has set forth the procedure for determining whether a state law imposes state-mandated costs on a school district or other local agency under Article XIII B, section 6. [FN9] Pursuant to that procedure, two school districts (San Diego Unified and Kern High) and one county (Santa Clara) filed a "test claim" with the Commission. [FN10] Kern High and Santa Clara did not appear in the trial court proceedings, and we will refer to the test claimants as such or simply as San Diego Unified.

FN9. Government Code section 17500 et seq.; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-333, 285 Cal.Rptr. 66, 814 P.2d 1308 (*Kinlaw*).

FN10. Government Code sections 17521, 17551, subdivision (a).

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The test claim concerned two statutes: Government Code section 54952, as amended by Statutes 1993, chapter 1138 (this measure operated from April 1, 1994 to July 21, 1994, for the school site councils and advisory committees at issue here); and Education Code section 35147, as added by Statutes 1994, chapter 239, as an urgency measure (effective from July 21, 1994, onward, for those councils and committees). These two statutes will be referred to as the Test Claim statutes or the two Test Claim statutes.

The 1993 amendment to Government Code section 54952 redefined the "legislative body" that must comply with the open meeting requirements of the Ralph M. Brown Act (the Brown Act), [FN1] including the requirement imposed by Government Code section 54954.2 to prepare and post an agenda. As amended by the 1993 legislation, section 54952 provides in relevant part:

FN1. See Government Code section 54950.5.

"As used in this chapter, 'legislative body' means:

"(a) The governing body of a local agency or any other local body created by state or federal statute.

"(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body...."

Education Code section 35147 requires nine designated school site councils and advisory committees to comply with certain notice, agenda, and public comment requirements, but otherwise exempts them *451 from the Brown Act and other open meeting acts. Section 35147 specifies in relevant part:

"(a) Except as specified in this section, any meeting of the councils or committees specified in subdivision (b) is exempt from the provisions of this article, the Bagley-Keene Open Meeting Act ..., and the Ralph M. Brown Act....

"(b) The councils and schoolsite advisory committees established pursuant to [Education Code] Sections 52012, 52065, 52176, and 52852, subdivision (b) of Section 54425, Sections 54444.2, 54724, and 62002.5, and committees formed pursuant to Section 11503 or [former] Section 2604 of Title 25 of the United States Code, are subject to this section.

"(c) Any meeting held by a council or committee specified in subdivision (b) shall be open to the public and any member of the public shall be able to address the council or committee during the meeting on any item within the subject matter jurisdiction of the council or committee. Notice of the meeting shall be posted at the schoolsite, or other appropriate place accessible to the public, at least 72 hours before the time set for the meeting. The notice shall specify the date, time, and location of the meeting and contain an agenda describing each item of business to be discussed or acted upon. The council or committee may not take any action on any item of business unless that item appeared on the posted agenda or unless the council or committee members present, by unanimous vote, find that there is a need to take immediate action and that the need for action came to the attention of the council or committee subsequent to the posting of the agenda. Questions or brief statements made at a meeting by members of the council, committee, or public that do not have a significant effect on pupils or employees in the school or school district or that can be resolved solely by the provision of information need not be described on an agenda as items of business. If a council or committee violates the procedural meeting requirements of this section and upon demand of any person, the council or committee shall reconsider the item at its next meeting, after allowing for public input on the item.

"(d) Any materials provided to a schoolsite council shall be made available to any member of the public who requests the materials pursuant to the California Public Records Act...."

The nine school site councils and advisory committees specified in Education Code section 35147, subdivision (b), were, save for one, established by statutes enacted in the 1970's and 1980's as part of the following programs: the School Improvement Plan (a general program that disburses money across all aspects of school operation and

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performance; Educ.Code. § § 52012, 52015); the Native American Indian Education Program (Educ.Code. § 52065); the Chacon-Mosoone Bilingual-Bicultural Education Act of 1976 (Educ.Code. § § 52160, 52176); the School-Based Program Coordination Act (to coordinate various categorical aid programs; Educ.Code. § § 52850, 52852); the McAteer Act (compensatory education program--for programs beyond regular education program; Educ.Code. § § 54403, 54425, subd. (b)); the migrant education program (Educ.Code. § 54444.2); the School-Based Pupil Motivation and Maintenance Program and Dropout Recovery Act (to address truancy and dropout issues; Educ.Code. § § 54720, 54724); the Program [] to Encourage Parental Involvement (Educ.Code. § 11503, enacted 1990); and the federal Indian Education Program (see former 25 U.S.C. § 2604; now see 20 U.S.C. § 7801 et seq.).

*452 In the test claim, San Diego Unified alleged that the Test Claim statutes imposed certain open meeting requirements on these school site councils and advisory committees, constituting reimbursable state mandates. The Commission agreed. It found the statutes constituted reimbursable state mandates for the costs of preparing specified meeting agendas, posting those agendas, and providing the opportunity for the public to address agenda items.

Pursuant to Government Code section 17559, the state Department of Finance (the State) brought an administrative mandate proceeding to review the Commission's decision. [FN12] The trial court agreed with the Commission, stating: "Two primary issues are raised in this matter. The first issue is whether the 1993 amendments to the Brown Act [i.e., to Government Code section 54952] and the 1994 enactment of ... section 35147 mandate a new program or higher level of service. The Court concludes that they do. The second issue is whether a reimbursable state mandate is created only when an advisory council or committee which is subject to the Brown Act is required by state law. The Court concludes that it is not. [] The petition for writ of mandate is DENIED."

FN12. Government Code section 17559, subdivision (b).

These are the two issues before us as well. Government Code section 17559 requires that the trial court review the Commission's decision under the substantial evidence standard; where the trial court applies this standard, we are generally confined to inquiring whether substantial evidence supports that court's decision. [FN13] However, we independently review the trial court's "legal conclusions about the meaning and effect of constitutional and statutory provisions." [FN14]

FN13. City of San Jose v. State of California (1996) 45 Cal.App.4th 1802, 1810, 53 Cal.Rptr.2d 521 (City of San Jose).

FN14. City of San Jose, supra, 45 Cal.App.4th at page 1810, 53 Cal.Rptr.2d 521.

DISCUSSION

I. New Program or Higher Level of Service for an Existing Program

[4][5] A reimbursable state mandate is created only when the state "mandates" a "new program" or a "higher level of service" for an existing program on any local government, including a school district. [FN15] "Program" has its commonly understood meaning: a program carries out "the governmental function of providing services to the public"; or it is a law "which, to implement a state policy, impose[s] unique requirements on local governments and do[es] not apply generally to all residents and entities in the state." [FN16]

FN15. Article XIII B, sections 6, 8, subdivision (d); Government Code section 17514; Lucia Mar, supra, 44 Cal.3d at page 835, 244 Cal.Rptr. 677, 750 P.2d 318; City of El Monte, supra, 83 Cal.App.4th at page 277, 99 Cal.Rptr.2d 333.

FN16. County of Los Angeles, supra, 43 Cal.3d at page 56, 233 Cal.Rptr. 38, 729 P.2d 202.

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In this part of the opinion, we address the issue of whether the two Test Claim statutes reflect a "new program" or a "higher level of service" for an existing program. In the next part, we confront the issue of whether the two statutes "mandate" the program services.

The parties spend considerable time on whether the school site councils and advisory bodies were "legislative bodies" subject to the Brown Act before the Test Claim statutes, and thus whether the Test Claim statutes involve a "new program." *453 We need not resolve this matter. Even assuming the school site councils and advisory committees were subject to the Brown Act before the advent of the two Test Claim statutes, these two statutes reflect a "higher level of service" for existing programs. [FN17]

FN17. Article XIII B, section 6; Government Code section 17514; see City of El Monte, supra, 83 Cal.App.4th at page 277, 99 Cal.Rptr.2d 333.

[6] As a preliminary matter, we note that we are dealing with "programs" within the meaning of the state mandate laws. The provision of educational services--as carried out by the school site councils and advisory committees at issue--is certainly a governmental program, as that term is commonly understood. The two Test Claim statutes, as well, set forth unique requirements on local government (school districts) to further the state policy of open public meetings; these requirements do not apply generally to residents and entities in the state.

On the issue of "higher level of service," the 1993 legislative package that redefined "legislative body" for Brown Act purposes in section 54952 also repealed a Brown Act statute that applied to advisory bodies of local agencies, including advisory bodies of school districts. [FN18] The repealed Brown Act statute was Government Code section 54952.3; as enacted, it provided in relevant part:

FN18. Statutes 1993, chapter 1138, sections 3, 5, pages 6387-6388; see Government Code section 54951.

"As used in this chapter 'legislative body' also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a governing body of a local agency.

"Meetings of such advisory commissions, committees or bodies ... shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.

"If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings is required..." [FN19]

FN19. Former Government Code section 54952.3 (added by Stats.1968, ch. 1297, § 1, p. 2444 [note: amended nonsubstantively by Stats.1975, ch. 959, § 7, p. 2241, and by Stats.1981, ch. 968, § 26, p. 3694]), italics added.

The State concedes that all of the school site councils and advisory committees at issue here are advisory bodies. This is borne out by their similar treatment as advisory entities within Education Code section 35147.

The two Test Claim statutes reflect a higher level of service for the existing programs served by these councils and committees than what former Government Code section 54952.3 specified. The Test Claim statutes require that meeting agendas be prepared and posted at least 72 hours before the meeting, and that the public be allowed to address agenda items. [FN20] These requirements are above *454 those specified in the italicized portions of former Government Code section 54952.3, set forth *ante*. No party has disputed that the increased amount of costs involving this higher level of service is significant and surpasses the statutory minimum cost mandate set forth in Government Code section

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17564.

FN20. See Government Code section 54954.2, imposing such Brown Act requirements on the advisory bodies at issue here from April 1, 1994 to July 21, 1994; see also Education Code section 35147, imposing such requirements on these advisory bodies from July 21, 1994, onward.

We conclude that the Test Claim statutes specify a "higher level of service" for existing programs. We now turn to the thornier issue: whether these two statutes "mandate" a higher level of service.

2. "Mandate" a Higher Level of Service

[7] For there to be a reimbursable state mandate here, the Constitution and Government Code require that the Test Claim statutes "mandate" a higher level of service. [FN21]

FN21. Article XIII B, section 6;
Government Code section 17514.

The State argues that the school site councils and advisory committees referred to in the Test Claim statutes serve categorical aid programs that school districts participate in either voluntarily or as a condition to receive state or federal funds. From this, the State concludes that, *as a matter of law*, where a school district participates in a state statutory program voluntarily or conditionally, the State may impose reasonable requirements on the district without providing a reimbursable state mandate, because the State has not *legally mandated* such program participation. While the State's position looks strong on the surface, there are cracks in its foundation.

The State's position finds support in a 1984 appellate court decision, City of Merced v. State of California, [FN22] The question there was whether a new state statute that required compensation for business goodwill in local eminent domain proceedings constituted a reimbursable state mandate under statutory law. The court said no, reasoning "that whether a city or county decides to exercise eminent

domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain.... Thus, payment for loss of goodwill is not a state-mandated cost." [FN23]

FN22. City of Merced v. State of California
(1984) 153 Cal.App.3d 777, 200 Cal.Rptr.
642 (City of Merced).

FN23. City of Merced, supra, 153
Cal.App.3d at page 783, 200 Cal.Rptr. 642.

Two months after City of Merced, this court, in City of Sacramento v. State of California (Sacramento I), [FN24] employed similar reasoning. The question in Sacramento I was whether a state law requiring local public employees to be covered by the state unemployment insurance law constituted a state mandate under Article XIII B, section 6, and statutory law. [FN25] The State asserted that it was only complying with a federal requirement rather than imposing a state mandate. [FN26] The federal component of the unemployment insurance system induced states to cover local public employees, by making the states incur substantial political and economic *455 detriment for not doing so. [FN27] We looked at the definition of a federal mandate in Article XIII B, section 9, subdivision (b), which directs compliance "without discretion" or "which unavoidably make[s] the provision of existing services more costly" (costs of federal mandates are not within Article XIII B's spending limits for state and local governments). A federal mandate, we reasoned, is one in which the mandated governmental entity "has no discretion to refuse." [FN28] We concluded that while it was economically and politically detrimental for the State not to comply with the federal law, the State still had the *legal* discretion not to do so; however, the local government had no discretion whether to comply with the state statute. [FN29] Thus, the state statute constituted a reimbursable state mandate.

FN24. City of Sacramento v. State of
California (1984) 156 Cal.App.3d 182, 203
Cal.Rptr. 258 (Sacramento I); see also
County of Contra Costa v. State of

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California (1986) 177 Cal.App.3d 62, 79-80, footnote 10, 222 Cal.Rptr. 750 (County of Contra Costa).

FN25. Sacramento I, supra, 156 Cal.App.3d at page 186, 203 Cal.Rptr. 258.

FN26. Sacramento I, supra, 156 Cal.App.3d at page 186, 203 Cal.Rptr. 258.

FN27. Sacramento I, supra, 156 Cal.App.3d at page 187, 203 Cal.Rptr. 258.

FN28. Sacramento I, supra, 156 Cal.App.3d at page 197, 203 Cal.Rptr. 258.

FN29. Sacramento I, supra, 156 Cal.App.3d at pages 196-197, 203 Cal.Rptr. 258.

In 1986, in County of Contra Costa, this court agreed with City of Merced that the state statute requiring the payment of business goodwill in eminent domain proceedings did not constitute a state-mandated cost. [FN30] We noted that "we employed analogous reasoning in [Sacramento I]." [FN31] We characterized Sacramento I as follows: "There the city contended that a state law requiring public employees to be covered by the state unemployment insurance law constituted a state mandate. The state countered that it was only complying with a federal requirement.... We noted that federal law provided financial incentives and that it would have been politically unpalatable for the state to refuse to extend coverage to public employees, but nonetheless the decision was optional with the state.... The same reasoning applies here: the decision to proceed in eminent domain is optional with the local government. Since the state does not mandate that the local agency incur the costs it claims, the agency is not entitled to reimbursement from the state." [FN32]

FN30. County of Contra Costa, supra, 177 Cal.App.3d at pages 79- 80 & footnote 10, 222 Cal.Rptr. 750.

FN31. County of Contra Costa, supra, 177 Cal.App.3d at page 79, footnote 10, 222 Cal.Rptr. 750.

FN32. County of Contra Costa, supra, 177 Cal.App.3d at pages 79- 80, footnote 10, 222 Cal.Rptr. 750.

In 1990, the state Supreme Court, in City of Sacramento v. State of California (Sacramento II), [FN33] rejected our reasoning in Sacramento I. The issue of state mandate in Sacramento II was the same as in Sacramento I, and again implicated the question of federal mandate. [FN34] Sacramento II did not directly review Sacramento I, but involved litigation arising from a Sacramento I remand. [FN35]

FN33. City of Sacramento v. State of California (1990) 50 Cal.3d 51, 266 Cal.Rptr. 139, 785 P.2d 522 (Sacramento II).

FN34. Sacramento II, supra, 50 Cal.3d at pages 57, 70, 266 Cal.Rptr. 139, 785 P.2d 522.

FN35. Sacramento II, supra, 50 Cal.3d at pages 59-60, 266 Cal.Rptr. 139, 785 P.2d 522; see Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 1581, footnote 8, 15 Cal.Rptr.2d 547 (Hayes).

As in Sacramento I, the argument in Sacramento II supporting a narrower view of mandate was that the words "without discretion" and "unavoidably" in the Article XIII B, section 2, subdivision (b) definition of federal mandate require that there be clear legal compulsion for there to be a *456 federal mandate. [FN36] The argument supporting a broader view of mandate countered that the consequences of California's failure to comply with the federal "carrot and stick" scheme were so substantial that the state had no realistic "discretion" to refuse, and thus there

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was a federal mandate because of *practical* compulsion. [FN37]

FN36. *Saoramento II, supra*, 50 Cal.3d at page 71, 266 Cal.Rptr. 139, 785 P.2d 522.

FN37. *Sacramento II, supra*, 50 Cal.3d at page 71, 266 Cal.Rptr. 139, 785 P.2d 522.

The *Sacramento II* court adopted the broader view of mandate, disagreeing with our adoption of the narrower view in *Sacramento I*. In doing so, the high court noted that the vast bulk of cost-producing federal influence on state and local government is by inducement or incentive rather than by direct legal compulsion. [FN38] The court noted that "certain regulatory standards imposed by the federal government under 'cooperative federalism' [i.e., federal-state carrot and stick] schemes are coercive on the states and localities in every practical sense." [FN39] The test for determining whether there is a federal mandate, *Sacramento II* concluded, is whether compliance with federal standards "is a matter of true choice," that is, whether participation in the federal program "is truly voluntary." [FN40] *Sacramento II* went on to say: "Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." [FN41]

FN38. *Sacramento II, supra*, 50 Cal.3d at page 73, 266 Cal.Rptr. 139, 785 P.2d 522.

FN39. *Sacramento II, supra*, 50 Cal.3d at pages 73-74, 266 Cal.Rptr. 139, 785 P.2d 522.

FN40. *Sacramento II, supra*, 50 Cal.3d at

page 76, 266 Cal.Rptr. 139, 785 P.2d 522; see also *Haves, supra*, 11 Cal.App.4th at pages 1581- 1582, 15 Cal.Rptr.2d 547.

FN41. *Sacramento II, supra*, 50 Cal.3d at page 76, 266 Cal.Rptr. 139, 785 P.2d 522.

Another state Supreme Court decision that has some bearing on the question of state mandate in terms of legal versus practical compulsion is *Lucia Mar*. [FN42] The issues there were whether a state statute that required school districts to contribute part of the cost of educating disabled pupils at state schools constituted a "new program" for the districts, and whether the districts were "mandated" by the state to make these contributions. [FN43] The argument in *Lucia Mar* that there was no state mandate was that the school districts had the option, under another state statute, to provide a local program for disabled children, to send them to private schools, or to refer them to the state schools. [FN44] The argument in favor of a state mandate was that the districts "had no other reasonable alternative than to utilize the services of the state[] schools, as they [were] the least expensive alternative in educating [disabled] children." [FN45] Since the Commission in *Lucia Mar* had concluded that "the state statute at issue did not specify a "new program" or "higher level of service," it never reached the issue of state "mandate." The *Lucia Mar* court concluded there was a "new program," and remanded the mandate issue to the Commission without explicitly resolving whether the concept of state mandate is confined to legal compulsion or whether it extends to practical compulsion as well. [FN46]

FN42. *Lucia Mar, supra*, 44 Cal.3d 830, 244 Cal.Rptr. 677, 750 P.2d 318.

FN43. *Lucia Mar, supra*, 44 Cal.3d at pages 832, 836, 244 Cal.Rptr. 677, 750 P.2d 318.

FN44. *Lucia Mar, supra*, 44 Cal.3d at page 837, 244 Cal.Rptr. 677, 750 P.2d 318.

FN45. *Lucia Mar, supra*, 44 Cal.3d at page

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837, 244 Cal.Rptr. 677, 750 P.2d 318.FN46, Lucia Mar, supra, 44 Cal.3d at pages 836-837, 838, 244 Cal.Rptr. 677, 750 P.2d 318.

Citing *Lucia Mar's* mandate discussion, two appellate court decisions have characterized the concept of state mandate in terms of whether the local governmental entity has an alternative to the state scheme. The first decision, *County of Los Angeles v. Commission on State Mandates*, noted that if "a local entity or school district has alternatives under the statute other than the mandated [cost], it does not constitute a state mandate." [FN47] Like *Lucia Mar*, though, *County of Los Angeles v. Commission on State Mandates* does not say whether these "alternatives," for state mandate purposes, are just legal alternatives or whether they encompass practical alternatives as well. The second decision is a recent decision from this court, *City of El Monte*. [FN48] We observed there that "[t]he possible existence of reasonable alternatives ... [leaves] open the question whether the [state-directed cost] [was] mandated...." [FN49]

FN47, County of Los Angeles v. Commission on State Mandates (1995) 32 Cal.App.4th 805, 818, 38 Cal.Rptr.2d 304, citing Lucia Mar, supra, 44 Cal.3d at pages 836-837, 244 Cal.Rptr. 677, 750 P.2d 318.

FN48, City of El Monte, supra, 83 Cal.App.4th 266, 99 Cal.Rptr.2d 333.

FN49, City of El Monte, supra, 83 Cal.App.4th at page 278, footnote 6, 99 Cal.Rptr.2d 333, italics added, citing Lucia Mar, supra, 44 Cal.3d at pages 836-837, 244 Cal.Rptr. 677, 750 P.2d 318.

[8] In line with *Sacramento II's* approach to mandate and with this court's characterization of *Lucia Mar* in *City of El Monte*, we define the concept of state mandate to include situations where the local governmental entity has no reasonable alternative to

the state scheme or no true choice but to participate in it, rather than confine the concept to direct legal compulsion as argued by the State. Our definition aligns with the constitutional and statutory language relating to state mandate when viewed against the backdrop of how the concept of federal mandate in Article XIII B has been interpreted by our Supreme Court. Article XIII B, section 6, as pertinent, states simply that "[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government," the State shall pay for that mandate. Government Code section 17514, part of the statutory scheme that implements Article XIII B, section 6, defines " '[c]osts mandated by the state' " to mean, as relevant here, "any increased costs which a local agency or school district is required to incur ... as a result of any statute ... which mandates a new program or higher level of service of an existing program." [FN50] Although Article XIII B defines a federal mandate as one being "without discretion" or involving "unavoidabl[e]" costs, [FN51] our Supreme Court has interpreted that mandate along the lines of whether reasonable, practical alternatives exist to the federal directive. [FN52] Given the less mandatory language surrounding the definition of state mandate, *458 we construe the Article XIII B concept of state mandate along these same lines. Like the pervasive "carrot and stick" approach to federal-state relations that prompted the federal mandate interpretation, a similar approach pervades state-local relations, as the educational programs referenced in the test claim statute of Education Code section 35147 aptly illustrate.

FN50. See Government Code section 17500.

FN51. Article XIII B, section 9, subdivision (b).

FN52, Sacramento II, supra, 50 Cal.3d at pages 70-76, 266 Cal.Rptr. 139, 785 P.2d 522.

[9] At oral argument, the State emphasized the statutory language of Government Code section 17513 defining " '[c]osts mandated by the federal government' " as including "costs resulting from enactment of a state law or regulation where failure

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to enact that law or regulation to meet specific federal program or service requirements *would result in substantial monetary penalties or loss of funds to public or private persons in the state.*" (Italics added.) The State noted that similar language does not appear in the statutory definition of "[c]osts mandated by the state" set forth in Government Code section 17514. Nevertheless, as the Sacramento II court observed, Government Code sections 17513 and 17514 merely implement the constitutional language of Article XIII B; the focus of the Sacramento II's "mandate" analysis remained on Article XIII B, section 9's language of "without discretion" and "unavoidabl[e]." [FN53] In any event, statutory language cannot trump constitutional language nor our high court's interpretation of that constitutional language.

FN53, Sacramento II, supra, 50 Cal.3d at pages 70-76, 266 Cal.Rptr. 139, 785 P.2d 522; see Government Code section 17500.

That brings us full circle to the State's argument here. The State argues that, *as a matter of law*, where a local governmental entity participates in a state statutory program either voluntarily or as a condition of receiving funds, the State may impose reasonable requirements on the entity without having to pay a reimbursable state mandate. The key to this argument is that the concept of voluntary or conditional participation encompasses *all* participation except that which is *legally* compelled. Applying this argument, then, the State notes that since San Diego Unified is not *legally* compelled to offer the programs for which the Test Claim statutes increase the agenda and public comment costs, that is the end of the analysis--there can be no state mandate as a matter of law. San Diego Unified may simply discontinue these "discretionary," "voluntary," "optional" programs (i.e., not *legally* compelled programs) and not incur the additional costs of posting and preparing meeting agendas, and providing for public comment on agenda items, pursuant to the Test Claim statutes.

However, for the reasons set forth above, we do not construe state mandate as limited to situations of *legal* compulsion. We construe it to also encompass situations where there is no reasonable alternative or no true choice but to participate in the state scheme.

The State's narrow view of state mandate ignores the realities of how contemporary multilevel governments carry out much of their business.

The Commission never considered the issues whether the test claimants have a reasonable alternative or a true choice not to participate in the educational programs at issue, and thus a reasonable alternative to paying the higher costs associated with the "higher level of service" specified in Education Code section 35147 and Government Code section 54952. We will remand this matter to the Commission for it to resolve these issues, because the *459 Commission is charged with initially deciding whether a local agency is entitled to reimbursement under Article XIII B, section 6. [FN54] furthermore, the statutory procedure to implement ARTICLE XIII B, section 6, "establishes procedures ... for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created." [FN55]

FN54. See Lucia Mar, supra, 44 Cal.3d at page 837, 244 Cal.Rptr. 677, 750 P.2d 318; Government Code section 17551; see also Government Code section 17500.

FN55, Kinlaw, supra, 54 Cal.3d at page 333, 285 Cal.Rptr. 66, 814 P.2d 1308; see also Government Code section 17500 et seq.

DISPOSITION

The judgment is reversed, and this matter is remanded to the Commission for further proceedings consistent with this opinion. Each party will pay its own appellate costs.

We concur: NICHOLSON and HULL, JJ.

122 Cal.Rptr.2d 447, 167 Ed. Law Rep. 283, 2 Cal. Daily Op. Serv. 6362, 2002 Daily Journal D.A.R. 7992 Review Granted, Previously published at: 100 Cal.App.4th 243, (Cal.Const. art. 6, s 12; Cal. Rules of Court, Rules 28, 976, 977, 979)

END OF DOCUMENT

County of Los Angeles Test Claim Amendment
Penal Code Section 13730 as Added and Amended by: Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1985, Chapter 483, Statutes of 2001; Penal Code Section 12028.5 as Added and Amended by Chapter 901, Statutes of 1984, Chapters 830 and 833, Statutes of 2002; Family Code Section 6228 as Added and Amended by Chapter 1022, Statutes of 1999, Chapter 377, Statutes of 2002
Crime Victims' Domestic Violence Incident Reports

Declaration of Bernice K. Abram

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

I, Bernice K. Abram, Sergeant, Sheriff's Department, County of Los Angeles, executed a declaration on April 26, 2000, supporting reimbursement for developing and implementing methods and procedures to comply with new State-mandated requirements in responding to and reporting domestic violence incidents.

I declare that it is my information or belief that the County of Los Angeles "Crime Victims' Domestic Violence Incident Reports" test claim, filed on May 11, 2000 with the Commission on State Mandates, is substantially related to this test claim amendment incorporating subsequent changes to Family Code Section 6228 and Penal Code Section 13730 [the test claim legislation] as follows: Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, Section 12028.5 of the Penal Code as added and amended by Chapter 901, Statutes of 1984, Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002

I declare that the County of Los Angeles will incur costs well in excess of \$1,000 during the 2002-03 fiscal year to implement Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, to implement Section 12028.5 of the Penal Code as added and amended by Chapter 901, Statutes of 1984, Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002.

I declare that Chapter 483, Statutes of 2001, in adding Section 13730(c)(3), mandates that:

" ... The [domestic violence incident] report shall include at least all of the following ...

(3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether the inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5" [Emphasis added.]

I declare that Chapter 483, Statutes of 2001, in adding Section 13730(c)(3), imposes three mandatory duties upon local law enforcement agencies:

1. When "... necessary, for the protection of the peace officer or other persons present, [the mandatory duty] to inquire of the victim, the alleged abuser or both, whether a firearm or o Section 12028.5" her deadly weapon was present at the location..."
2. The mandatory duty to report if an inquiry was made "... whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether the inquiry disclosed the presence of a firearm or other deadly weapon."
3. The mandatory duty that "... [a]ny firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5"

It is my information or belief that, in order to comply with the [above] duties, each, of over 10,000 domestic violence incidents, in Los Angeles County during 2002-03, now requires, on average, an additional 5 minutes to inquire of the victim whether a firearm or other deadly weapon is present, an additional 30 minutes to search for and obtain the weapon; an additional 5 minutes to report the results, and, where the weapon is confiscated pursuant to Penal Code Section 12028.5, an additional 90 minutes to perform the following duties:

1. The duty requiring that a peace officer "... shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present." [Section 12028.5(b)]
2. The duty requiring that "... [u]pon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. [Section 12028.5(b)]
3. The duty requiring that the confiscated "... firearm or other deadly weapon shall be held [not less than] than 48 hours." [Section 12028.5(b)]
4. The duty requiring that "... the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession [as specified] 48 hours after the seizure or as soon thereafter as possible, but no later than 5 business days after the seizure." [Section 12028.5(b)]
5. The duty requiring that a "... peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located." [Section 12028.5(c)]
6. The duty requiring that "[a]ny firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership." [Section 12028.5(d)]
7. The duty requiring that "...[a]ny firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section

830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028." [Section 12028.5(e)]

8. The duty requiring that, "... [i]n those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned." [Section 12028.5(f)]

9. The duty requiring that "... the law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements." [Section 12028.5(g)]

10. The duty requiring local law enforcement agencies and the district attorney to participate in hearings "... if the person requests a hearing", in which case, "... the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party." [Section 12028.5(h)]

11. The duty requiring local law enforcement agencies and the district attorney to participate in hearings " ... [i]f there is a petition for a second hearing, and, "...unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat," the duty of local law enforcement agencies to "... return of the firearm or other deadly weapon" and, as specified, pay "... reasonable attorney's fees to the prevailing party." [Section 12028.5(j)]

I declare that the County of Los Angeles will incur costs well in excess of \$1,000 during the 2002-03 fiscal year to implement Penal Code Section 13730(c)(3) as added by Chapter 483, Statutes of 2001 and, when required under Section 13730(c)(3), Penal Code Section 12028.5 as added and amended by Chapter 901, Statutes of 1984, Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002.

I declare that Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code [as added by Chapter 1022, Statutes of 1999 - the original test claim legislation], imposes additional duties on local government as underlined below:

"(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, or to his or her representative if the victim is deceased, as defined in subdivision (g), upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.

(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 or his or her representative no later than 48 hours after being requested by the victim or his or her representative, unless the state or local law enforcement agency informs the victim or his or her representative 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 or his or her representative no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence or his or her representative no later than five working days after being requested by a victim or his or her representative, unless the state or local law enforcement

agency informs the victim or his or her representative 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 or his or her representative no later than 10 working days after the request is made.

(d) Any person requesting copies under this section shall present state or local law enforcement with his or her identification, such as a current, valid driver's license, a state-issued identification card, or a passport and, if the person is a representative of the victim, a certified copy of the death certificate or other satisfactory evidence of the death of the victim 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.

(f) This section shall be known, and may be cited, as the Access to Domestic Violence Reports Act of 1999.

(g)(1) For purposes of this section, a representative of the victim means any of the following:

(A) The surviving spouse.

(B) A surviving child of the decedent who has attained 18 years of age.

(C) A domestic partner, as defined in subdivision (a) of Section 297.

(D) A surviving parent of the decedent.

(E) A surviving adult relative.

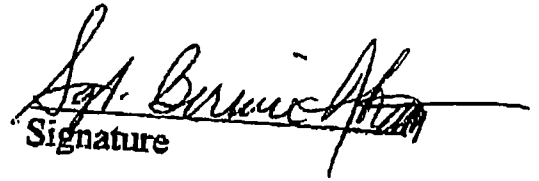
(F) The public administrator if one has been appointed." [Emphasis added.]

I declare that the County of Los Angeles will incur costs well in excess of \$1,000 during the 2002-03 fiscal year to implement Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code, mandating that additional services be provided to 'representatives' of domestic violence victims.

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 to those matters, I believe them to be true.

04-16-03 COUNTY OF L.A.
Date and Place


Signature

County of Los Angeles Test Claim Amendment

Penal Code Section 13730 as Added and Amended by: Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1985, Chapter 483, Statutes of 2001; Penal Code Section 12028.5 as Added and Amended by Chapter 901, Statutes of 1984, Chapters 830 and 833, Statutes of 2002; Family Code Section 6228 as Added and Amended by Chapter 1022, Statutes of 1999, Chapter 377, Statutes of 2002
Crime Victims' Domestic Violence Incident Reports

Declaration of Wendy Watanabe

Wendy Watanabe makes the following declaration and statement under oath:

I, Wendy Watanabe, Director of Financial Programs, Administrative Services Division, Sheriff's Department, County of Los Angeles, am responsible for claiming reimbursement for developing and implementing methods and procedures to comply with new State-mandated requirements in responding to and reporting domestic violence incidents.

I declare that it is my information or belief that the County of Los Angeles "Crime Victims' Domestic Violence Incident Reports" test claim, filed on May 11, 2000 with the Commission on State Mandates, is substantially related to this test claim amendment incorporating subsequent changes to Family Code Section 6228 and Penal Code Section 13730 [the test claim legislation] as follows: Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, Section 12028.5 of the Penal Code as added and amended by Chapter 901, Statutes of 1984, Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002

I declare that the County of Los Angeles will incur costs well in excess of \$1,000 during the 2002-03 fiscal year to implement Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code and Chapter 483, Statutes of 2001, amending Section 13730 of the Penal Code and, with respect to implementing Section 13730(c)(3) of the Penal Code, to implement Section 12028.5 of the Penal Code as added and amended by Chapter 901, Statutes of 1984, Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002.

I declare that Chapter 483, Statutes of 2001, in adding Section 13730(c)(3), mandates that:

“ ... The [domestic violence incident] report shall include at least all of the following ...

(3) A notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether the inquiry disclosed the presence of a firearm or other deadly weapon. Any firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5”
[Emphasis added.]

I declare that Chapter 483, Statutes of 2001, in adding Section 13730(c)(3), imposes three mandatory duties upon local law enforcement agencies:

1. When “... necessary, for the protection of the peace officer or other persons present, [the mandatory duty] to inquire of the victim, the alleged abuser or both, whether a firearm or o Section 12028.5”
her deadly weapon was present at the location...”
2. The mandatory duty to report if an inquiry was made “... whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether the inquiry disclosed the presence of a firearm or other deadly weapon.”
3. The mandatory duty that “... [a]ny firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident shall be subject to confiscation pursuant to Section 12028.5”

It is my information or belief that, in order to comply with the [above] duties, each, of over 10,000 domestic violence incidents, in Los Angeles County during 2002-03, now requires, on average, an additional 5 minutes to inquire of the victim whether a firearm or other deadly weapon is present, an additional 30 minutes to search for and obtain the weapon; an additional 5 minutes to report the results, and, where the weapon is confiscated pursuant to Penal Code Section 12028.5, an additional 90 minutes to perform the following duties:

1. The duty requiring that a peace officer "... shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present." [Section 12028.5(b)]
2. The duty requiring that "... [u]pon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered, the time limit for recovery as required by this section, and the date after which the owner or possessor can recover the firearm or other deadly weapon. [Section 12028.5(b)]
3. The duty requiring that the confiscated "... firearm or other deadly weapon shall be held [not less than] than 48 hours." [Section 12028.5(b)]
4. The duty requiring that "... the firearm or other deadly weapon shall be made available to the owner or person who was in lawful possession [as specified] 48 hours after the seizure or as soon thereafter as possible, but no later than 5 business days after the seizure." [Section 12028.5(b)]
5. The duty requiring that a "... peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this section shall deliver the firearm within 24 hours to the city police department or county sheriff's office in the jurisdiction where the college or school is located." [Section 12028.5(c)]
6. The duty requiring that "[a]ny firearm or other deadly weapon that has been taken into custody that has been stolen shall be restored to the lawful owner, as soon as its use for evidence has been served, upon his or her identification of the firearm or other deadly weapon and proof of ownership." [Section 12028.5(d)]
7. The duty requiring that "...[a]ny firearm or other deadly weapon taken into custody and held by a police, university police, or sheriff's department or by a marshal's office, by a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, by a peace officer of the Department of Parks and Recreation, as defined in subdivision

(f) of Section 830.2, by a peace officer, as defined in subdivision (d) of Section 830.31, or by a peace officer, as defined in Section 830.5, for longer than 12 months and not recovered by the owner or person who has lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in subdivision (c) of Section 12028." [Section 12028.5(e)]

8. The duty requiring that, "... [i]n those cases in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, the agency shall advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure, initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned." [Section 12028.5(f)]

9. The duty requiring that "... the law enforcement agency shall inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. For the purposes of this subdivision, the person's last known address shall be presumed to be the address provided to the law enforcement officer by that person at the time of the family violence incident. In the event the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, the agency shall make a diligent, good faith effort to learn the whereabouts of the person and to comply with these notification requirements." [Section 12028.5(g)]

10. The duty requiring local law enforcement agencies and the district attorney to participate in hearings "... if the person requests a hearing", in which case, "... the court clerk shall set a hearing no later than 30 days from receipt of that request. The court clerk shall notify the person, the law enforcement agency involved, and the district attorney of the date, time, and place of the hearing. Unless it is shown by a preponderance of the evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney's fees to the prevailing party." [Section 12028.5(h)]

11. The duty requiring local law enforcement agencies and the district attorney to participate in hearings " ... [i]f there is a petition for a second hearing, and, "...unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat," the duty of local law enforcement agencies to "... return of the firearm or other deadly weapon" and, as specified, pay "... reasonable attorney's fees to the prevailing party." [Section 12028.5(j)]

I declare that the County of Los Angeles will incur costs well in excess of \$1,000 during the 2002-03 fiscal year to implement Penal Code Section 13730(c)(3) as added by Chapter 483, Statutes of 2001 and, when required under Section 13730(c)(3), Penal Code Section 12028.5 as added and amended by Chapter 901, Statutes of 1984, Chapter 830, Statutes of 2002 and Chapter 833, Statutes of 2002.

I declare that Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code [as added by Chapter 1022, Statutes of 1999 - the original test claim legislation], imposes additional duties on local government as underlined below:

"(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, or to his or her representative if the victim is deceased, as defined in subdivision (g), upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.

(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 or his or her representative no later than 48 hours after being requested by the victim or his or her representative, unless the state or local law enforcement agency informs the victim or his or her representative 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 or his or her representative no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence or his or her representative no later than five working days after being requested by a

victim or his or her representative, unless the state or local law enforcement agency informs the victim or his or her representative 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 or his or her representative no later than 10 working days after the request is made.

(d) Any person requesting copies under this section shall present state or local law enforcement with his or her identification, such as a current, valid driver's license, a state-issued identification card, or a passport and, if the person is a representative of the victim, a certified copy of the death certificate or other satisfactory evidence of the death of the victim 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.

(f) This section shall be known, and may be cited, as the Access to Domestic Violence Reports Act of 1999.

(g)(1) For purposes of this section, a representative of the victim means any of the following:

(A) The surviving spouse.

(B) A surviving child of the decedent who has attained 18 years of age.

(C) A domestic partner, as defined in subdivision (a) of Section 297.

(D) A surviving parent of the decedent.

(E) A surviving adult relative.

(F) The public administrator if one has been appointed." [Emphasis added.]

I declare that the County of Los Angeles will incur costs well in excess of \$1,000 during the 2002-03 fiscal year to implement Chapter 377, Statutes of 2002, amending Section 6228 of the Family Code, mandating that additional services be provided to 'representatives' of domestic violence victims.

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 to those matters, I believe them to be true.

4/16/03, County of Los Angeles
Date and Place

Wendy W. Soble
Signature

Mailing List

Claim Number:
Issue:

99-TC-08
Crime Victim's Domestic Violence Incident Reports

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Mr. Mark Sigman, SB90 Coordinator
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4080 Lemon Street, 3rd Floor
Riverside, CA 92501

I will fax 26 pages 3 times = 78 pages

Date	4/17/03	# of pages	26/78
To	Paula Higashi	From	Leann and Kaye
Co/Dept	CEM	Co.	
Phone #		Phone #	916-445-8564
Fax #	916-445-0278	Fax #	916-445-8564

Mailing List

Claim Number:
Issue:

99-TC-08
Crime Victim's Domestic Violence Incident Reports

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



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

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 17th day of April 2003, I served the attached:

Documents: County of Los Angeles Test Claim Amendment, Penal Code Section 13730 as Added and Amended by: Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1985, Chapter 483, Statutes of 2001: Penal Code Section 12028.5 as Added and Amended by Chapter 901, Statutes of 1984, Chapters 830 and 833, Statutes of 2002; Family Code Section 6228 as Added and Amended by chapter 1022, Statutes of 1999, Chapter 377, Statutes of 2002, Crime Victim's Domestic Violence Incident Reports, including a 1 page letter of J. Tyler McCauley dated April 17, 2003, a Test Claim Form, a title page "a", 20 page narrative, a 1 page declaration of Leonard Kaye, a Exhibits 1-9 (51 pages), all pursuant to CSM-99-TC-08, 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 (narrative only) and mailed the original set.
- 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 17th day of April 2003, at Los Angeles, California.

