

COMMISSION ON STATE MANDATES

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September 11, 2012

Ms. Juliana Gmur
1865 Hernden Avenue, Suite K-44
Clovis, CA 93611

And Interested Parties and Affected State Agencies (See Mailing List)

RE: **Final Staff Analysis, Proposed Statewide Cost Estimate, and Notice of Hearing**
Domestic Violence Background Checks, 01-TC-29
Penal Code Section 273.75 (a) and (c)
Statutes 2001, Chapter 713 (AB 1129)
County of Alameda, Claimant

Dear Ms. Gmur:

The final staff analysis and proposed statewide cost estimate for this matter are enclosed.

Hearing

This matter is set for hearing on **Friday, September 28, 2012** at 9:30 a.m. in Room 447, State Capitol, Sacramento, CA. This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Kerry Ortman at (916) 323-3562 if you have questions.

Sincerely,

A handwritten signature in black ink that reads "Heather Halsey".

Heather Halsey
Executive Director

ITEM 14
FINAL STAFF ANALYSIS
Proposed Statewide Cost Estimate

\$15,938,818

Penal Code Section 273.75 (a) and (c)

Statutes 2001, Chapter 713

Domestic Violence Background Checks
(01-TC-29)

County of Alameda, Claimant

This matter was rescheduled from July 27, 2012 to September 28, 2012. Except to reflect the date change, no other revisions were made to this document.

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim statute requires district attorneys and prosecuting city attorneys to perform database searches of persons when they are charged with domestic violence, or when considering a domestic violence restraining order against them. The information is required to be presented to the courts for consideration under certain circumstances.

The claimant filed the test claim on July 31, 2002. The Commission on State Mandates (Commission) adopted a statement of decision on July 26, 2007, and parameters and guidelines on July 28, 2011.¹ The Commission found that the test claim statutes and executive orders impose a reimbursable state-mandated program on district attorneys or prosecuting city attorneys within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by January 30, 2012.

Eligible Claimants and Period of Reimbursement

Any city or county that employs prosecuting attorneys or district attorneys, respectively, and incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of these costs.

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Alameda filed the test claim on July 31, 2002, establishing eligibility for reimbursement on or after July 1, 2001. However, the test claim statute did not become operative until January 1, 2002. Therefore, costs incurred for compliance with most of the mandated activities are reimbursable on or after January 1, 2002.

¹ Exhibit A.

Reimbursable Activities

The Commission approved the following activities for reimbursement:

For each eligible claimant, the following ongoing activities are eligible for reimbursement upon any charge involving acts of domestic violence (as defined in Pen. Code, § 13700 & Fam. Code, §§ 6211 & 6203):

- A. Perform or cause to be performed, in specified electronic data bases, a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court (Pen. Code, § 273.75(a)).
 1. Review by district attorney or prosecuting city attorney, or at the direction of such attorneys by investigative staff, support staff, legal assistant or others of any or all of the databases as listed in Penal Code section 273.75 as based on defendant information provided in or with the law enforcement report.
- B. Present the information for consideration by the court (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody, and (2) upon consideration of any plea agreement (Pen. Code, § 273.75(a)).
 1. Review of databases or printouts from databases by district attorney or prosecuting city attorney in preparation for presenting such database evidence in court.
 2. Presentation of evidence in court by district attorney or prosecuting city attorney.
- C. If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the order issued in the current criminal proceeding, and any other information regarding a conviction of the defendant, to the other court immediately after the order has been issued (Pen. Code, § 273.75(c)).
 1. Review of databases or printouts from databases, case file, and other sources as may be necessary by district attorney or prosecuting city attorney, or by another at the direction of the attorney, to obtain relevant information for a letter or report to be sent to order-issuing court of a different jurisdiction.
 2. Draft letter or report and sign.
 3. Prepare envelope and mail.

Statewide Cost Estimate

Staff reviewed the claims data submitted by 25 cities and counties and compiled by the SCO. The actual claims data showed that 204 claims were filed between fiscal years 2001-2002 and 2010-2011 for a total of \$15,938,818². Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*

There are currently 478 cities and 58 counties in California. Of those, only 25 filed reimbursement claims for this program between fiscal years 2001 and 2011. If other eligible claimants file late or amended claims, the amount of reimbursement claims may exceed the statewide cost estimate. For example, the County of Los Angeles indicated that it will be filing a late claim. Late claims for the initial claiming period (2004-2005 through 2009-2010 fiscal years) may be filed until January 30, 2013. Late claims for fiscal year 2010-2011 may be filed until February 15, 2013.

- *The number of reimbursement claims filed will vary from year to year.*

This program is based on activities performed by law enforcement agencies and district attorneys when domestic violence charges are filed, when considering domestic violence restraining orders, or when presenting information to the court regarding domestic violence background checks. Therefore, the total number of reimbursement claims filed with the SCO will increase or decrease based on the number of incident reports taken by the local agencies.

- *There is a wide variation in costs claimed for this program.*

The variation in costs claimed is likely due to the size of the city or county making the claim. Approximately 25% of the claimed amount is claimed by the City of Los Angeles. The City of Los Angeles, the largest city in California, maintains an entire department to administer domestic violence arrests. The variation in costs is also likely due to the classification of the employee performing the mandate. Under the mandates process the state does not dictate the level of staff a claimant may use to carry out a mandate. For example, most claimants for this program use peace officers to do the domestic violence background checks, however the County of Ventura uses an office assistant and, thus, their costs claimed are substantially lower.

- *There may be several reasons that non-claiming counties did not file for reimbursement, including but not limited to:*

1. Some counties cannot reach the \$1,000 threshold for filing reimbursement claims.
2. Claimants report that some counties are not filing for reimbursement because they do not prosecute misdemeanor domestic violence cases.
3. Counties did not have supporting documentation to file a reimbursement claim.

² Claims data reported as of April 3, 2012.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits, and reduce any claims it deems to be excessive or unreasonable.

Methodology

Fiscal Years 2001-2002 through 2010-2011

The statewide cost estimate for fiscal years 2001-2002 through 2010-2011 was developed by totaling the 204 actual reimbursement claims filed with the SCO for these years.

The statewide cost estimate includes ten fiscal years for a total of \$15,938,818. This averages to \$1,593,882 annually in costs for the state for this ten year period. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2001-2002	15	\$583,468
2002-2003	18	\$1,482,019
2003-2004	19	\$1,445,585
2004-2005	18	\$1,301,244
2005-2006	20	\$1,404,520
2006-2007	22	\$1,613,395
2007-2008	23	\$1,942,263
2008-2009	23	\$2,086,981
2009-2010	23	\$1,871,143
2010-2011	23	\$2,208,200
TOTAL	204	\$15,938,818

Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate

On June 8, 2012, Commission staff issued the draft staff analysis and proposed statewide cost estimate for comment.³ On June 15, 2012, Department of Finance submitted comments stating that they do not have any concerns with the Commission’s recommendation to adopt the proposed statewide cost estimate.⁴

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$15,938,818** for costs incurred in complying with the *Domestic Violence Background Checks* program.

³ Exhibit B.

⁴ Exhibit C.

Commission on State Mandates

Original List Date: 8/1/2002
Last Updated: 6/19/2012
List Print Date: 07/03/2012
Claim Number: 01-TC-29
Issue: Domestic Violence Background Checks

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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

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