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4 BEFORE THE
5 COMMISSION ON STATE MANDATES
6 STATE OF CALIFORNIA

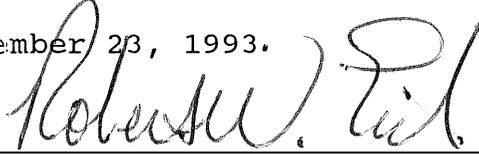
6 Claim of:)
7 County of Los Angeles,) No. CSM-4426
8) Penal Code Section 264.2
9 Claimant) Subdivisions (b)(1) and (b)(2)
10) Penal Code Section 13701
11) Chapter 999, Statutes of 1991
12) Chapter 224, Statutes of 1992
13) Rape Victims Counseling
14) Center Notice

11
12 DECISION

13 The attached Proposed Statement of Decision of the
14 Commission on State Mandates is hereby adopted by the
15 Commission on State Mandates as its decision in the
16 above-entitled matter.

17 This Decision shall become effective on September 23, 1993.

18 IT IS SO ORDERED September 23, 1993.

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21 _____
22 Robert W. Eich, Executive Director
23 Commission on State Mandates

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:	}	No. CSM-4426
County of Los Angeles,)	Penal Code Section 264.2,
)	Subdivisions (b)(1) and (b)(2)
)	Penal Code Section 13701
Claimant)	Chapter 999, Statutes of 1991
)	Chapter 224, Statutes of 1992
)	<u>Rape Victims Counseling</u>
)	<u>Center Notice</u>

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on July 22, 1993, in Sacramento, California, during a regularly scheduled hearing.

Mr. Leonard Kaye, representing the County of Los Angeles, and Mr. Jim Apps, representing the Department of Finance, introduced themselves.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do the provisions of Penal Code section 264.2, subdivisions (b)(1) and (b) (2) , as added and amended by Chapter 999, Statutes of 1991

1 (Chapter 999/91) and Chapter 224, Statutes of 1992
2 (Chapter 224/92), and Penal Code section 13701, as amended by
3 Chapter 999/91, impose a new program or higher level of service in
4 an existing program upon local agencies within the meaning of
5 Government Code section 17514 and section 6, article XIIIIB of the
6 California Constitution?

7
8 BACKGROUND AND FINDINGS OF FACT

9
10 The test claim was received by the Commission on December 29, 1991,
11 from the County of Los Angeles.

12
13 The elements for filing a test claim, as specified in section 1183
14 of Title 2 of the California Code of Regulations, were satisfied.

15
16 The County of Los Angeles alleged that the provisions of the
17 Penal Code referenced in its test claim impose a reimbursable state
18 mandated program by requiring local law enforcement agencies to
19 notify the local rape victim counseling center when the victim is
20 transported to a hospital for examination; upon a request from the
21 hospital, to verify whether the local rape victim counseling center
22 has been notified, to provide and revise the "Victims of Domestic
23 Violence" card by adding information to assist rape victims.

24
25 The Department of Finance (DOF) recommended the Commission find
26 that the statutory provisions for local law enforcement agencies to
27 notify the local rape victim counseling center on behalf of an
28 alleged rape victim is a reimbursable state mandated program.

1 However , the DOF indicated that Penal Code section 264.2,
2 subdivision (b)(2), pertaining to verification by the local law
3 enforcement agency as to whether the rape victim counseling center
4 was notified, does not contain a reimbursable state mandated
5 program.

6
7 The Office of Criminal Justice Planning (OCJP) recommended that the
8 Commission find that Penal Code section 264.2, subdivision (b)(2),
9 does contain a reimbursable state mandated program. The OCJP
10 stated that prior to subdivision (b)(2), there was no requirement
11 upon law enforcement to respond to hospital requests. The only
12 permissive provision is applicable to hospitals and if a hospital
13 exercises its option to request verification, a law enforcement
14 officer or agency must provide the information as to whether the
15 rape victim counseling center was notified.

16
17 With respect to subdivision (b)(1) of Penal Code section 264.2, as
18 added by Chapter 999/91 and amended by Chapter 224/92, the
19 Commission observed that a law enforcement officer, or his or her
20 **agency**, must immediately notify the local rape victim counseling
21 center whenever a victim of an alleged rape was transported to a
22 hospital for examination and the victim approves of that
23 notification.

24
25 The Commission found that under prior law this notification
26 requirement was not imposed on local law enforcement agencies or
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1 their officers.

2
3 Regarding subdivision (b)(2) of Penal Code section 264.2, as added
4 by Chapter 224/92, the Commission examined the statutory language
5 and the related legislative history. The Commission found that
6 that the only permissive provision in the statute applies to
7 hospitals, and not to local law enforcement. In sum, if the
8 hospital exercises its option to verify the notification, then the
9 local law enforcement agency is mandated to respond to the
10 hospital's request in a manner which provides the necessary
11 information to verify the notification to a rape victim counseling
12 center.

13
14 The Commission noted that while local enforcement may have been
15 expected to respond to a **hospital's** request, it was not required to
16 respond to such a request.

17
18 Also, the Commission recognized that in view of Government Code
19 section 17565, even if some local law enforcement agencies were
20 providing the subject verification at its option before
21 Chapter 224/92, after this law compliance was not optional or
22 voluntary, but state mandated.

23
24 With respect to Penal Code section 13701, as amended by
25 Chapter 999/91, the Commission found that local law enforcement
26 must now include the information set forth in Penal Code
27
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1 section 13701, subdivision (i)(5), on the "Victims of Domestic
2 Violence" card and that the card must be revised to reflect the new
3 information.

4
5 Moreover, the Commission found that this statute requires that the
6 "Victims of Domestic Violence" card be furnished to a new group of
7 alleged victims described under Penal Code section 261, 261.5, 262,
8 286, 288a, or 289.

9
10 APPLICABLE LAW RELEVANT TO THE DETERMINATION
11 OF A REIMBURSABLE STATE MANDATED PROGRAM

12
13 Government Code section 17500 and following, and section 6,
14 article XIIIIB of the California Constitution and related case law.

15
16 CONCLUSION

17
18 The Commission determines that it has the authority to decide this
19 claim under the provisions of Government Code sections 17500
20 and 17551, subdivision (a).

21
22 The Commission concludes that the provisions of Penal Code
23 section 264.2, subdivisions (b)(1) and (b)(2), as added and amended
24 by Chapter 999/91 and Chapter 224/92, and Penal Code section 13701,
25 as amended by Chapter 999/91, impose a new program or higher level
26 of service in an existing program upon local agencies within the
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1 meaning of Government Code section 17514 and section 6,
2 article XIIIIB of the California Constitution.

3
4 The foregoing conclusion is subject to the following conditions:

5 The determination of a reimbursable state mandated
6 program does not mean that all increased costs claimed
7 will be reimbursed. Reimbursement, if any, is subject to
8 Commission approval of parameters and guidelines for
9 reimbursement of the mandated program; approval of a
statewide cost estimate; a specific legislative
appropriation for such purpose; a timely-filed claim for
reimbursement; and subsequent review of the claim by the
State Controller's Office.

10 If the statewide cost estimate for this mandate does not
11 exceed one million dollars (\$1,000,000) during the first
12 twelve (12) month period following the operative date of
13 the mandate, the Commission shall certify such estimated
14 amount to the State Controller's Office, and the State
15 Controller shall receive, review, and pay claims from the
16 State Mandates Claims Fund as claims are received.
17 (Government Code section 17610.)
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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment and business address is 1414 K Street, Suite 315, Sacramento, California 95814.

On September 28, 1993, I served the attached Statement of Decision by placing a true copy thereof in an envelope addressed to each of the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

Mr. Jim Apps
Department of Finance
915 L Street, Sixth Floor
Sacramento, CA 95814

Ms. Gaye Welch-Brown
State Controller's Office
3301 C Street, Room 500
Sacramento, CA 95814

Mr. Floyd D. Shimomura
Attorney General's Office
1515 K Street, Suite 511
Sacramento, CA 95814

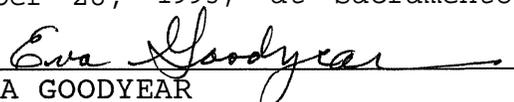
Mr. Eugene L. Balonon
Office of Criminal Justice Planning
1130 K Street
Sacramento, CA 95814

Mr. Leonard Kaye
County of Los Angeles
Department of Auditor-Controller
500 West Temple Street, Suite 603
Los Angeles, CA 90012

Mr. Allan Burdick
David M. Griffith & Associates
5715 Marconi Avenue, Suite A
Carmichael, CA 95608

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 28, 1993, at Sacramento, California.

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EVA GOODYEAR