BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Section 13730, As Added and Amended by Statutes 1984, Chapter 1609, and Statutes 1995, Chapter 965; and Family Code Section 6228, As Added by Statutes 1999, Chapter 1022, Filed on May 15, 2000, by County of Los Angeles, Claimant.	No. 99-TC-08 *Crime Victims ' Domestic Violence Incident Reports* CORRECTED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Corrected Decision Adopted on September 25, 2003)*

STATEMENT OF DECISION

The attached Corrected Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Paula Higashi

PAULA HIGASHI, Executive Director

9-30-03

Date

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STATEMENT OF DECISION

On April 24, 2003, the Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing. Mr. Leonard Kaye and Sergeant Wayne Bilowit appeared for claimant, County of Los Angeles. Mr. Dirk L. Anderson and Ms. Susan Geanacou appeared on behalf of the Department of Finance, At the hearing, testimony was given, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis, which partially approves this test claim, by a 5-O vote. The Statement of Decision was adopted on May 29, 2003.

On June 5, 2003, a request for reconsideration was filed, alleging the following error of law in the May 29, 2003 decision:

> The Commission finding that "the state has not previously mandated any record retention requirements on local agencies for information to victims of domestic violence" does not take into consideration prior law, codified in Government Code sections 26202 and 34090, that requires counties and cities to maintain records for two years. Thus, the conclusion, that storage of the domestic violence incident report for five years constitutes a new program or higher level of service, is an error of law.
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> The statement of decision should be corrected to reflect that local agencies are now required to perform a higher level of service by storing these documents for three additional years only.

On June 20, 2003, the Commission, by a superrnajority of five affirmative votes, granted the request for reconsideration and agreed to conduct a subsequent hearing on the merits

of the request to determine if the prior final decision is contrary to law and to correct any errors of law.

On September 252003, the Commission reconsidered this test claim during a regularly scheduled hearing. Mr. Leonard Kaye appeared for claimant, County of Los Angeles. Ms. Susan Geanacou and Ms. Sarah Mangum appeared on behalf of the Department of Finance. At the hearing, testimony was given, the issue on reconsideration was submitted, and the vote was taken.

The Commission, by a 6-O vote, adopted the staff analysis finding an error of law. On a separate motion, the Commission moved the staff recommendation, adopting the corrected decision, by a 6-O vote.

BACKGROUND

This test claim is filed on two statutes: Penal Code section 13730, as added in 1984 (Stats. 1984, ch. 1609) and amended in 1995 (Stats. 1995, ch. 965), and Family Code section 6228, as added in 1999 (Stats. 1999, ch. 1022).

In 1987, the Commission approved a test claim filed by the City of Madera on Penal Code section 13730, as added by Statutes 1984, chapter 1609, as a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution *(Domestic Violence Information*, CSM 4222). The parameters and guidelines for *Domestic Violence Information* authorized reimbursement for local law enforcement agencies for the "costs associated with the development of a Domestic Violence Incident Report form used to record and report domestic violence calls," and "for the writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident."

Beginning in fiscal year 1992-93, the Legislature, pursuant to Government Code section 17581, suspended Penal Code section 13730, as added by Statutes 1984, chapter 1609. With the suspension, the Legislature assigned a zero-dollar appropriation to the mandate and made the program optional.

In 1995, the Legislature amended Penal Code section 13730, subdivision (c). (Stats. 1995, ch. 965.) As amended, Penal Code section 13730, subdivision (c)(1)(2), required law enforcement agencies to include in the domestic violence incident report additional information relating to the use of alcohol or controlled substances by the alleged abuser, and any prior domestic violence responses to the same address.

In February 1998, the Commission considered a test claim filed by the County of Los Angeles on the 1995 amendment to Penal Code section 13730 *(Domestic Violence Training and Incident Reporting,* CSM 96-362-01). The Commission concluded that the additional information on the domestic violence incident report was not mandated by the state because the suspension of the statute under Government Code section 17581 made the completion of the incident report itself optional, and the additional information under the test claim statute came into play only after a local agency elected to complete the incident report.

Based on the plain language of the suspension statute (Gov. Code, § 1758 1), the Commission determined, however, that during window periods when the state operates

without a budget, the original suspension of the mandate would not be in effect. Thus, the Commission concluded that for the limited window periods when the state operates without a budget until the Budget Act is chaptered and makes the domestic violence incident reporting program optional under Government Code section 1758 1, the activities required by the 1995 amendment to Penal Code section 13730 were reimbursable under article XIII B, section 6.

In 1998, Government Code section 17581 was amended to close the gap and continue the suspension of programs during window periods when the state operates without a budget.[1] In 2001, the California Supreme Court upheld Govermnent Code section 17581 as constitutionally valid.[2] The Domestic Violence Information and Incident Reporting programs remained suspended in the 2002 Budget Act.[3]

Test Claim Statutes

Penal Code section 13730, as added in 1984 and amended in 1995, requires local law enforcement agencies to develop and prepare domestic violence incident reports as specified by statute. Penal Code section 13730 states the following:

> (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons were 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.

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[1] Government Code section 17581, subdivision (a), now states the following: "No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year *and the for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year.* . ." (Emphasis added.)

[2] *Carmel Valley Fire Protection District v. State of California* (2001) 25 Cal.4th 287, *297.*

[3] Since the operative date of Family Code section 6228 (January 1, 2000), Penal Code section 13730, as originally added by Statutes 1984, chapter 1609, has been suspended by the Legislature pursuant to Government Code section 1758 1. The Budget Bills suspending Statutes 1984, chapter 1609, are as follows: Statutes 1999, chapter 50, Item 921 O-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 92 10-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3.

The Governor's Proposed Budget for fiscal year 2003-04 proposes to continue the suspension of the domestic violence incident report.

(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 that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency has previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

Family Code section 6228 requires state and local law enforcement agencies to provide, without charge, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence upon request within a specified period of time. Family Code section 6228, as added in 1999, states the following:

(a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 62 11.

(b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made.

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

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

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

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

According to the bill analysis prepared by the Assembly Judiciary Committee, section 6228 was added to the Family Code for the following reasons:

> The author notes that victims of domestic violence do not have an expedited method of obtaining police reports under existing law. Currently, victims of domestic violence must write and request that copies of the reports be provided by mail. It often takes between two and three weeks to receive the reports. Such a delay can prejudice victims in their ability to present a case for a temporary restraining order under the Domestic Violence Prevention Act. This bill remedies that problem by requiring law enforcement agencies to provide a copy of the police report to the victim at the time the request is made if the victim personally appears.
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> The purpose of restraining and protective orders issued under the DVPA [Domestic Violence Prevention Act] is to prevent a recurrence of domestic violence and to ensure a period of separation of the persons involved in the violent situation. According to the author, in the absence of police reports, victims may have difficulty presenting the court with proof of a past act or acts of abuse and as a result may be denied a necessary restraining order which could serve to save a victim's life or prevent further abuse. By increasing the availability of police reports to victims, this bill improves the likelihood that victims of domestic violence will have the required evidence to secure a needed protective order against an abuser.
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> In addition to the lack of immediate access to copies of police reports, the author points to the cost of obtaining such copies. For example, in Los Angeles County the fee is $13 per report. These fees become burdensome for victims who need to chronicle several incidents of domestic violence. For some the expense may prove prohibitive.

Claimant's Position

The claimant contends that the test claim legislation imposes a reimbursable state-mandated program upon local law enforcement agencies to prepare domestic violence incident reports, store the reports for five years, and retrieve and copy the reports upon request of the domestic violence victim. The claimant contends that it takes 30 minutes to prepare each report, 10 minutes to store each report, and 15 minutes to retrieve and copy each report upon request by the victim. The claimant states that from January 1, 2000, until June 30, 2000, the County prepared and stored 4,740 reports and retrieved 948 reports for victims of domestic violence. The claimant estimates costs during this six-month time period in the amount of $181,228.

Position of the Department of Finance

The Department of Finance filed comments on June 16, 2000, concluding that Family Code section 6228 results in costs mandated by the state. The Department further states that the nature and extent of the specific required activities can be addressed in the parameters and guidelines developed for the program.

COMMISSION FINDINGS

A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[4] In addition, the required activity or task must constitute a "new program" or create a "higher level of service" over the previously required level of service? The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[6] To determine if the program is new or imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation.[7] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[8]

This test claim presents the following issues:

- Does the Commission have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports?
- Is Family Code section 6228 subject to article XIII B, section 6 of the California Constitution?
- Does Family Code section 6228 mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does Family Code section 6228 impose "costs mandated by the state" within the meaning of Governrnent Code sections 17514?

These issues are addressed below.

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[4] *Long Beach Unified School Dist. v. State of California (1990) 225* Cal.App.3d 155, 174.

[5] *County of Los Angeles v. State of California (1987) 43* Cal.3d *46, 56; Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[6] *Id.*

[7] *Lucia Mar Unified School Dist., supra, 44* Cal.3d 830, 835.

[8] Government Code section 17514; *County of Fresno v. State of California (1991) 53* Cal.3d *482, 487; County of Sonoma v. Commission on State Mandates (2000) 84* Cal.App.4th 1264, 1284.

I. Does the Commission have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports?

The test claim filed by the claimant includes Penal Code section 13730, as added in 1984 and amended in 1995. The claimant acknowledges the Commission's prior final decisions on Penal Code section 13730, and acknowledges the Legislature's suspension of the program. Nevertheless, the claimant argues that Penal Code section 13730, as well as Family Code section 6228, constitute a reimbursable state-mandated program for the activity of preparing domestic violence incident reports. In comments to the draft staff analysis, the claimant argues as follows:

> Penal Code section 13730 mandates that "domestic violence incident reports" be prepared. This mandate was found to be reimbursable by the Commission. [Footnote omitted.] Therefore, this reporting duty was new, not required under prior incident reporting law.
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> Now, "domestic violence incident reports" must be prepared–and-provided to domestic violence victims upon their request, without exception, in accordance with Family Code section 6228, and in accordance with Penal Code section 13730, as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995 . . .[9]

The claimant further contends that "the duty to prepare and provide domestic violence incident reports to domestic violence victims was not made 'optional' under Government Code section 1758 1." (Emphasis in original)"

For the reasons provided below, the Commission finds that it does not have jurisdiction to retry the issue whether Penal Code section 13730, as added in 1984 and amended in 1995, constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void. *In City and County of San Francisco v. Ang,* the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is conclusive of the issues involved in the decision. [11]

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[9] Claimant's comments to draft staff analysis, pages 2-3.

[10] *Id.* at pages 4-6.

[11] *City and County of San Francisco* v. *Ang* (1979) 97 Cal.App.3d 673,697; See also, *Heap* v. *City of Los Angeles* (1936) 6 Cal.2d 405,407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; and *Save Oxnard Shores v. California Coastal Commission (1986)* 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.

These principles are consistent with the purpose behind the statutory scheme and procedures established by the Legislature in Government Code section 17500 and following, which implement article XIII B, section 6 of the California Constitution. As recognized by the California Supreme Court, Governrnent Code section 17500 and following were established for the "express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."[12]

Government Code section 17521 defines a test claim as follows: " 'Test claim' means the first claim, including claims joined or consolidated with the first claim, filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." Government Code section 17553, subdivision (b), requires the Commission to adopt procedures for accepting more than one claim on the same statute or executive order if the subsequent test claim is filed within 90 days of the first claim and consolidated with the first claim. Section 1183, subdivision (c), of the Commission's regulations allow the Commission to consider multiple test claims on the same statute or executive order only if the issues presented are different or the subsequent test claim is filed by a different type of local governmental entity.

Here, the issue presented in this test claim is the same as the issue presented in the prior test claim; i.e., whether preparing a domestic violence incident report is a reimbursable state-mandated activity under article XIII B, section 6 of the California Constitution. The Commission approved CSM 4222, *Domestic Violence Information*, and has authorized reimbursement in the parameters and guidelines for "writing" the domestic violence incident reports as an activity reasonably necessary to comply with the mandated program. [13] Moreover, this test claim was filed more than 90 days after the original test claims on Penal Code section 13730.

Accordingly, the Commission finds that it does not have jurisdiction to retry the issue whether Penal Code section 13730, as added in 1984 and amended in 1995, constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

The remaining analysis addresses the claimant's request for reimbursement for compliance with Family Code section 6228.

II. Is Family Code Section 6228 Subject to Article XIII B, Section 6 of the California Constitution?

In order for Family Code section 6228 to be subject to article XIII B, section 6 of the California Constitution, the statute must constitute a "program." The California Supreme *Court,* in the case of *County of Los Angeles v. State of California*[14], defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not

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[12] *Kinlaw v. State of California (1991) 54* Cal.3d 326, 333.

[13] California Code of Regulations, title 2, section 1183.1, subdivision (a)(1)(4).

[14] *County of Los Angeles, supra, 43* Cal.3d 46, 56.

apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[15]

The plain language of Family Code section 6228 requires local law enforcement agencies to provide, without charging a fee, one copy of the domestic violence incident report and/or face sheet to victims of domestic violence within a specified time period. As indicated above, the purpose of the legislation is to assist victims in supporting a case for a temporary restraining order against the accused.

The Commission finds that Family Code section 6228 qualifies as a program under article XIII B, section 6. As determined by the Second District Court of Appeal, police protection is a peculiarly governmental function? The requirement to provide a copy of the incident report to the victim supports effective police protection in the area of domestic violence.[17] Moreover, the test claim statute imposes unique requirements on local law enforcement agencies that do not apply generally to all residents and entities in the state.

Accordingly, the Commission finds that Family Code section 6228 is subject to article XIII B, section 6 of the California Constitution.

III. Does Family Code Section 6228 Mandate a New Program or Higher Level of Service on Local Law Enforcement Agencies?

The claimant alleges that Family Code section 6228 mandates a new program or higher level of service within the meaning of article XIII B, section 6, for the activities of preparing, storing, retrieving, and copying domestic violence incident reports upon request of the victim.

Family Code Section 6228 Does Not Mandate a New Program or Higher Level of Service on Local Law Enforcement Agencies to Prepare a Report or a Face Sheet

First, the plain language of Family Code section 6228 does not mandate or require local law enforcement agencies to prepare a domestic violence incident report or a face sheet. Rather, the express language of the statute states that local law enforcement agencies "shall *provide*, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request." (Emphasis added.)

The claimant acknowledges that Family Code section 6228 does not expressly require the local agency to prepare a report. The claimant argues, however, that preparation of a

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[15] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

[16] *Id.*

[17] *Ante,* pp. 6-7 (bill analysis of Assembly Judiciary Committee, dated September 10, 1999).

report under Family Code section 6228 is an "implied mandate" because, otherwise, victims would be requesting non-existent reports. [18] The Commission disagrees.

Pursuant to the rules of statutory construction, courts and administrative agencies are required, when the statutory language is plain, to enforce the statute according to its terms. The California Supreme Court explained that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted] [19]

In this regard, courts and administrative agencies may not disregard or enlarge the plain provisions of a statute, nor may they go beyond the meaning of the words used when the words are clear and unambiguous. Thus, courts and administrative agencies are prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[20] This prohibition is based on the fact that the California Constitution vests the Legislature, and not the Commission, with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly:

> A strict construction of section 6 is in keeping with the rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power "are to be construed strictly, and are not to be extended to include matters not covered by the language used." ... "Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation." [Citations omitted.] Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding policies."[21]

Legislative history of Family Code section 6228 further supports the conclusion that the Legislature, through the test claim statute, did not require local agencies to prepare an incident report. Rather, legislative history indicates that local agencies were required under prior law to prepare an incident report. The analyses of the bill that enacted Family Code section 6228 all state that under prior law, a victim of domestic violence could

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[18] Claimant's test claim filing, page 10; Claimant's comments on draft staff analysis, pages 1, 7-10.

[19] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

[20] *Whitcomb v. California Employment Commission (1944) 24* Cal.2d 753, 757; In re *Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

[21] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

request in writing that a copy of the report be provided by mail.[22] The analysis prepared by the Assembly Appropriations Committee dated September 1, 1999, further states that "[a]ccording to the California State Sheriffs Association, reports are currently available for distribution within 3-12 working days," and that "agencies currently charge a fee of $5$15 per report."

Moreover, preparing a domestic violence incident report does not constitute a new program or higher level of service because preparation of the report is required under prior law. Penal Code section 13730, *as amended in* I993 (Stats. 1993, ch. 1230), added the requirement that "[a]ll domestic violence-related calls for assistance *shall be supported with a written incident report,* as described in subdivision (c), identifying the domestic violence incident." (Emphasis added.) The claimant did not include the 1993 amendment to Penal Code section 13730 in this test claim. In addition, the 1993 amendment to Penal Code section 13730 has not been included in the Legislature's suspension of Penal Code section 13730, as originally added in 1984, since neither the Legislature, the Commission, nor the courts, have made the determination that the 1993 statute constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.[23] Thus, the activity of preparing the domestic violence incident report is an activity currently required by prior law through the 1993 amendment to Penal Code section 13730.

Accordingly, the Commission finds that Family Code section 6228 does not mandate a new program or higher level of service on local agencies to prepare a domestic violence incident report or a face sheet and, thus, reimbursement is not required for this activity under article XIII B, section 6 of the California Constitution.

Family Code Section 6228 Does Not Impose a New Program or Higher Level of Service for the Activities of Providing, Retrieving, and Copying Information Related to a Domestic Violence Incident.

Family Code section 6228 expressly requires local law enforcement agencies to perform the following activities:

- Provide one copy of all domestic violence incident report face sheets to the victim, free of charge, within 48 hours after the request is made. If, however, the law enforcement agency informs the victim of the reasons why, for good cause, the face sheet is not available within that time frame, the law enforcement agency shall make the face sheet available to the victim no later than five working days after the request is made.

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[22] Bill Analysis of Assembly Judiciary Committee, dated September 10, 1999; Senate Floor Analysis dated September 8, 1999; Bill Analysis by the Assembly Appropriations Committee, dated September 1, 1999.

[23] Government Code section 17581, subdivision (a)(l), requires that the statute or executive order proposed for suspension must first be "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."

- Provide one copy of all domestic violence incident reports to the victim, free of charge, within five working days after the request is made. If, however, the law enforcement agency informs the victim of the reasons why, for good cause, the incident report is not available within that time frame, the law enforcement agency shall make the incident report available to the victim no later than ten working days after the request is made.
- The requirements in section 6228 shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incident report.

The Commission finds that the claimed activities of "retrieving" and "copying" information related to a domestic violence incident do not constitute a new program or higher level of service. Since 198 1, Government Code section 6254, subdivision (f), of the California Public Records Act has required local law enforcement agencies to disclose and provide records of incidents reported to and responded by law enforcement agencies to the victims of an incident.[24] Government Code section 6254, subdivision (f), states in relevant part the following:

> [S]tate and local law enforcement agencies shall disclose the names and addresses of the persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident . . . .

Except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation, law enforcement agencies are required to disclose and provide to the victim the following information:

- The full name and occupation of every individual arrested by the agency; the individual's physical description; the time and date of arrest; the factual circumstances surrounding the arrest; the time and manner of release or the location where the individual is currently being held; and all charges the individual is being held upon;[25] and
- The time, substance, and location of all complaints or requests for assistance received by the agency; the time and nature of the response; the time, date, and location of the occurrence; the time and date of the report; the name and age of the victim; the factual circumstances surrounding the crime or incident; and a general description of any injuries, property, or weapons involved.[26]

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[24] Government Code section 6254 was added by Statutes 1981, chapter 684. Section 6254 was derived from former section 6254, which was originally added in 1968 (Stats. 1968, ch. 1473).

[25] Governrnent Code section 6254, subdivision (f)(1).

[26] Governrnent Code section 6254, subdivision (f)(2).

Although the general public is denied access to the information listed above, parties involved in an incident who have a proper interest in the subject matter are entitled to such records.[27] The disclosure of a domestic violence incident report under Government Code section 6254, subdivision (f), of the Public Records Act is proper.[28]

Furthermore, the information required to be disclosed to victims under Governrnent Code section 6254, subdivision (f), satisfies the purpose of the test claim statute. As indicated in the legislative history, the purpose of the test claim statute is to assist victims of domestic violence in obtaining restraining and protective orders under the Domestic Violence Prevention Act. Pursuant to Family Code section 6300 of the Domestic Violence Prevention Act, a protective order may be issued to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. The Commission finds that the disclosure of information describing the factual circumstances surrounding the incident pursuant to Government Code section 6254, subdivision (f), is evidence that can **support** a victim's request for a protective order under Family Code section 6300.

Finally, the Commission acknowledges that the requirements under the test claim statute and the requirements under the Public Records Act are different in two respects. First, unlike the test claim statute, the Public Records Act does not specifically mandate when law enforcement agencies are required to disclose the information to victims. Rather, Government Code section 6253, subdivision (b), requires the local agency to make the records "promptly available." Under the test claim statute, law enforcement agencies are required to provide the domestic violence incident report face sheets within 48 hours or, for good cause, no later than five working days from the date the request was made. The test claim statute further requires law enforcement agencies to provide the domestic violence incident report within five working days or, for good cause, no later than ten working days from the date the request was made. While the time requirement imposed by Family Code section 6228 is specific, the activities of providing, retrieving, and copying information related to a domestic violence incident are not new and, thus, do not constitute a new program or higher level of service.

Second, unlike the test claim statute, the Public Records Act authorizes local agencies to charge a fee "covering the direct costs of duplication of the documentation, or a statutory fee, if applicable."[29] The test claim statute, on the other hand, requires local law enforcement agencies to provide the information to victims free of charge.

Although the test claim statute may result in additional costs to local agencies because of the exclusion of the fee authority, those costs are not reimbursable under article XIII B, section 6. The California Supreme Court has ruled that evidence of additional costs alone does not automatically equate to a reimbursable state-mandated program under section 6.

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[27] *Vallejos v. California Highway Patrol* (1979) 89 Cal.App.3d 781,786.

[28] *Baugh* v. *CBS',* Inc. (1993) 828 F.Supp. 745, 755.

[29] Government Code section 6253, subdivision (b).

Rather, the additional costs must result from a new program or higher level of service. In *County of Los Angeles v. State of California*, the Supreme Court stated:

> If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme [after article XIII B, section 6 was adopted].[30]

The Supreme Court affirmed this principle in *Lucia Mar Unified School District v. Honig*:

> We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.[31]

As indicated above, the state has not mandated a new program or higher level of service to provide, retrieve, and copy information relating to a domestic violence incident to the victim. Moreover, the First District Court of Appeal, in the *County of Sonoma* case, concluded that article XIII B, section 6 does not extend "to include concepts such as lost revenue. "[32, 33]

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[30] *County of Los Angeles, supra,* 43 Cal.3d at pages 55-56.

[31] *Lucia Mar Unified School District v. Honig, supra,* 44 Cal.3d at page 835; see also, *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[32] *County of Sonoma, supra,* 84 Cal.App.4th at page 1285.

[33] In comments to the draft staff analysis, the claimant cites analyses prepared by the Department of Finance, Legislative Counsel, and the Assembly Appropriations Committee on the test claim statute that indicate the lost revenues may be reimbursable to support its contention that Family Code section 6228 imposes a reimbursable state-mandated program (pp. 11-14).

But, these analyses are not determinative of the mandate issue. The statutory scheme in Government Code section 17500 et seq. contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. *(City of San Jose, supra,* 45 Cal.App.4th 1802, 18 17-18 18, quoting *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, and *Kinlaw v. State of California, supra,* 54 Cal.3d at p. 333.) Moreover, as indicated in the analysis, the conclusion that the activities of providing, retrieving, and copying do not constitute a new program or higher level of service is supported by case law.

Accordingly, the Commission finds that the activities of providing, retrieving, and copying information related to a domestic violence incident do not constitute a new program or higher level of service.

Family Code Section 6228 Does Not Impose a New Program or Higher Level of Service for the Activity of Informing the Victim of the Reasons Why, For Good Cause, the Incident Report and Face Sheet are not Available within the Statutory Time Limits.

Family Code section 6228, subdivision (b), states that the domestic violence incident report face sheet shall be made available to a victim no later than 48 hours after the request, unless the law enforcement agency informs the victim of the reasons why, for good cause, the face sheet is not available within 48 hours. Under these circumstances, the law enforcement agency is required to provide the face sheet to the victim within five working days after the request is made.

Family Code section 6228, subdivision (c), contains a similar provision. Subdivision (c) states that the domestic violence incident report shall be made available to a victim no later than five working days after the request, unless the law enforcement agency informs the victim of the reasons why, for good cause, the incident report is not available within five working days. Under these circumstances, the law enforcement agency is required to provide the incident report to the victim within ten working days after the request is made.

The Commission finds that the activity of informing the victim of the reasons why, for good cause, the incident report and the face sheet are not available within the statutory time limits does not constitute a new program or higher level of service.

Since 198 1, Government Code section 6253 of the Public Records Act has required law enforcement agencies to perform the same activity. Subdivision (c) of Government Code section 6253 states that each agency is required to determine whether a request for public records seeks copies of disclosable public records in the possession of the agency and notify the person making the request of the detertnination and the reasons of the determination within ten days of the request. Government Code section 6253, subdivision (c), further provides that the time limit may be extended if the agency notifies the person making the request, by written notice, of the reasons for the extension.[34]

Although the time limits defined in Governrnent Code section 6253 and Family Code section 6228 are different, the activity of informing the victim of the reasons why, for good cause, the incident report and face sheet are not available within the statutory time limits is not new and, thus, does not constitute a new program or higher level of service.

Storing the Domestic Violence Incident Report and Face Sheet for Five Years Constitutes a New Program or Higher Level of Service.

Family Code section 6228, subdivision (e), states that the requirements in section 6228 shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incident report. The claimant contends that

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[34] This activity derives from Government Code section 6256.1, which was added by Statutes 1981, chapter 968. In 1998, section 6256.1 was repealed and renumbered section 6253.

subdivision (e) imposes a new program or higher level of service on local law enforcement agencies to store the domestic violence incident report for five years. The County also argues that there is no law prior to the enactment of Family Code section 6228 that required local agencies to store domestic violence incident reports and face sheets in a readily accessible format.

For the reasons provided below, the Commission finds that Family Code section 6228, subdivision (e), imposes a new program or higher level of service on local law enforcement agencies to store the domestic violence incident report for three years only.

Before the enactment of the test claim statute, the Government Code imposed a two-year record retention requirement on local agencies. Government Code section 26202, which applies to counties, states in relevant part the following:

> [T]he board may authorize the destruction or disposition of *any record, paper, or document which is more than* two *years old,* which was prepared or received pursuant to state statute or county charter, and which is not expressly required by law to be filed and preserved if the board determines by four-fifths (4/5) vote that the retention of any such record, paper, or document is no longer necessary or required for county purposes. Such records, papers or documents need not be photographed, reproduced or microfilmed prior to destruction and no copy thereof need be retained. (Emphasis added.)[35]

Government Code section 34090, which applies to cities, similarly states in relevant part the following:

> Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may *destroy any city record, document, instrument, book or paper,* under his charge, without making a copy thereof, after the same is no longer required.
>
> *This section does not authorize destruction of:*
>
> [¶] . . .[¶]
>
> (d) *Records less than* two *years old. . .* (Emphasis added.)[36]

Criminal sanctions are imposed on the custodian of records pursuant to Government Code section 6200 if the records are destroyed. That section states the following:

> Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment in the state prison for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to day any of the following:

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[35] Governrnent Code section 26202 was last amended by Statutes 1963, chapter 1123.

[36] Government Code section 34090 was last amended by Statutes 1975, chapter 356.

(a) Steal, remove, or secrete.

(b) Destroy, mutilate, or deface.

(c) Alter or falsify.

In 198 1, the Attorney General's Office issued two opinions that defined the records required to be retained by cities pursuant to Government Code section 34090 and Government Code section 6200.[37] Government Code section 6200, which was originally enacted in 1943, imposes criminal sanctions on an official custodian of "any" public record who steals, destroys, or alters public documents. Section 6200 states the following:

> Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment in the state prison for two, three, or four years if, as to the whole or any part of the record, map, book, paper, or proceeding, the officer willfully does or permits any other person to do any of the following:
>
> (d) Steal, remove, or secrete.
>
> (e) Destroy, mutilate, or deface.
>
> (f) Alter or falsify.

Relying on case law authority, the Attorney General's Office determined that "records" within the meaning of Government Code sections 6200 and 34090 include *all* records that are required to be kept or were made or retained for the purpose of preserving its content for future use.

> . . . a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept or (2) because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference.[38]

Thus, if a document constitutes a record within this definition, it may not be destroyed except in accordance with the requirements of Government Code section 34090.[39]

Furthermore, the Commission disagrees with the County's assertion that Government Code section 34090 refers only to the destruction of records and does not impose a duty on agencies to maintain the records. The California Supreme Court in *People v. Memro,* a case addressing the discovery of personnel records of peace officers, found that Government Code section 34090 requires local agencies to *keep* public records for two years:

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[37] 64 Ops. Cal. Atty. Gen. 3 17 (1981); 64 Ops. Cal. Atty. Gen. 435 (1981).

[38] 64 Ops. Atty. Gen. 435,437 (1981).

[39] *Ibid.*

> Although the defendant calls the circumstances surrounding the records' destruction suspicious because the court's denial of the motion to discover them was a major focus of his appeal from the original judgment and the records were destroyed two months after oral argument in that appeal, the court could reasonably conclude that (1) the evidence showed the records were destroyed according to the provisions of the Government Code -- indeed, they were Kept for three years beyond the two-year period after which Government Code section 34090, subdivision (d), perrnitted their destruction . . . (Emphasis added.)[40]

Based on these authorities, the Commission finds that before the enactment of the test claim statute, cities were required by Government Code section 34090 to keep domestic violence incident reports for two years. Penal Code section 13730 (as amended by Stats. 1993, ch. 1230) required all law enforcement agencies to prepare the domestic violence incident report before the enactment of the test claim statute.[41] The domestic violence incident report qualifies as a "record" within the meaning of Government Code sections 6200 and 34090 since it is a document required to be to be kept by law enforcement agencies and was made or retained for the purpose of preserving its content for future use; i.e., possible future criminal investigation and prosecution.

The Commission further finds that counties were required by Government Code section 26202 to keep domestic violence incident reports for two years before the enactment of the test claim statute. The plain language of Government Code section 26202 prohibits counties from destroying records, required by state statute to be prepared, if they are less than two years old. As indicated above, Penal Code section 13730, as amended in 1993, required county law enforcement agencies to prepare the domestic violence incident report. Thus, when the test claim statute was enacted in 1999, counties could not destroy domestic violence incident reports that were less than two years old.

Moreover, the Commission finds that the interpretation by the court of the requirement to keep records pursuant Government Code section 34090 applies equally to Government Code section 26202. Under the rules of statutory construction, when similar words or phrases are used in two statutes they will be construed to have the same meaning.[42] Both Government Code section 26202 and section 34090 refer to "any record, paper, or document" and both prohibit the destruction of records, which are required to be kept by state statute, if they are less than two years old.

Finally, in 1976, the California Supreme Court held that an arrest record is a public record within the scope of Government Code section 6200.[43] Thus, unless otherwise provided by statute, arrest records are required to be kept and can only be destroyed in accordance with Government Code sections 26202 and 34090. The Commission finds that the same reasoning applies to domestic violence incident reports. Arrest records are

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[40] *People* v. *Memro* (1996) 11 Cal.4th 786, 831.

[41] See, pages 10-11, *ante*.

[42] *Hunstock v. Estate Development Corp.* (1943) 22 Cal.2d 205.

[43] *Loder v. Municipal Court* (1976) 17 Cal.3d 859, 863.

similar to incident reports because both documents are prepared by law enforcement agencies and are retained for the purpose of preserving evidence.

Accordingly, the Commission finds that storing the domestic violence incident report and face sheet for three years constitutes a new program or higher level of service.

Thus, the Commission must continue its inquiry to determine if storing the domestic violence incident report results in increased costs mandated by the state.

IV. Does Family Code Section 6228 Impose Costs Mandated by the State Within the Meaning of Government Code Section 17514?

Government Code section 175 14 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant states that it incurred $24,856 to store domestic violence incident reports from January 1, 2000, to June 30, 2000[44] and that none of the exceptions to finding a reimbursable state-mandated program under Government Code section 17556 apply here.

The Commission finds that the requirement to store domestic violence incident reports pursuant to Family Code section 6228, subdivision (e), results in costs mandated by the state under Government Code section 175 14, and that none of the exceptions under Government Code section 17556 apply to this activity.

CONCLUSION

The Commission concludes that Family Code section 6228, as added by Statutes 1999, chapter 1022, mandates a new program or higher level of service for local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 175 14 for the following activity only:

- Storing domestic violence incident reports and face sheets for three years. (Fam. Code, § 6228, subd. (e).)

The Commission further concludes that it does not have jurisdiction to retry the issue whether Penal Code section 13730, as added in 1984 and amended in 1995, constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.