ITEM 3A

TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Sections 12025, 12031, 13012, 13014, 13023 and 13730
Statutes 1980, Chapter 1340 (SB 1447); Statutes 1982, Resolution Chapter 147 (SCR 64); Statutes 1984, Chapter 1609 (SB 1472); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1995, Chapters 803 and 965 (AB 488 and SB 132); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); Statutes 2000, Chapter 626 (AB 715); Statutes 2001, Chapters 468 and 483 (SB 314 and AB 469); and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements and Requirements Spreadsheet, March 2000

Crime Statistics Reports for the Department of Justice
02-TC-04 & 02-TC-11

City of Newport Beach and County of Sacramento, Claimants

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Crime Statistics Reports for the Department of Justice
02-TC-04 & 02-TC-11

City of Newport Beach and County of Sacramento, Claimants

EXECUTIVE SUMMARY

This test claim was originally scheduled for the March 28, 2008 hearing, but was postponed when claimants submitted a test claim amendment on March 27, 2008. Commission staff notified claimants that it was incomplete. Claimants did not file a complete amendment within 30 days.[1] No changes have been made to the staff analysis except to update the chronology to reflect the proposed amendment.

The test claim consists of statutes and an alleged executive order that address reporting various crime statistics by local agencies to the California Department of Justice (DOJ). The crime statistics in the test claim legislation involve citizen complaints, juvenile justice, homicide, hate crimes, carrying loaded and concealed firearms, domestic violence, and the number of victims of violent crime who are aged 60 or older.

For the reasons discussed in the analysis below, staff finds that, beginning July 1, 2001, the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, §13014).

[1] California Code of Regulations, title 2, section 1183, subdivision (g).

- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, §13023).
- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. Staff finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

Staff also finds that all other test claim statutes and alleged executive order do not constitute a reimbursable state-mandated program. Neither Penal Code section 13012, nor the "Criminal Statistics Reporting Requirements" and "Requirements Spreadsheet" (March 2000), impose state-mandated requirements on local agencies or school districts.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

STAFF ANALYSIS

Claimants

City of Newport Beach and County of Sacramento

Chronology

9/6/02	Claimant City of Newport Beach files test claim 02-TC-04
10/24/02	Department of Finance files comments on 02-TC-04
10/25/02	Department of Justice requests extension of time to file comments on 02-TC-04
11/22/02	County of Sacramento files test claim 02-TC-11
1/28/03	Department of Justice files comments on test claim 02-TC-04
3/7/03	Claimants request extension to file rebuttal comments on 02-TC-04 & 02-TC-11 and request consolidation of test claims
3/13/03	Claimants file joint rebuttal comments on 02-TC-04 and 02-TC-11
9/26/07	Commission staff consolidates test claims 02-TC-04 and 02-TC-11
2/15/08	Commission staff issues draft staff analysis
3/7/08	Department of Finance submits comments on draft staff analysis
3/11/08	Claimant County of Sacramento files comments on the draft staff analysis
3/14/08	Commission staff issues final staff analysis and proposed Statement of Decision
3/27/08	Claimants file a proposed amendment to test claim
3/28/08	Commission staff postpones the final staff analysis and proposed Statement of Decision to a later Commission hearing to address proposed amendment to test claim
4/4/08	Commission staff notifies claimants that proposed amendment is incomplete and that claimants have 30 days to file a complete amendment
6/13/08	Commission staff reissues the final staff analysis and proposed Statement of Decision

Background

This test claim alleges crime statistics reporting activities that are required of, depending on the type of report, city and county law enforcement agencies, county probation departments, and district attorneys.

The Uniform Crime Reporting (UCR) Program is a city, county and state law enforcement program that provides a nationwide view of crime based on the submission of statistics by law enforcement agencies throughout the country. The crime data are submitted either to a state UCR Program or directly to the national UCR Program, administered by the Federal Bureau of Investigation (FBI). The International Association of Chiefs of Police (IACP) envisioned the need for statistics on crime in the 1920s. The IACP's Committee on Uniform Crime Records is a

voluntary national data collection effort begun in 1930. Crime data are, for the most part, collected monthly by the UCR Program. The FBI provides report forms, tally sheets, and self-addressed envelopes to agencies that complete the forms and return them directly to the FBI.

In 1955, California enacted laws requiring the state's participation in the UCR Program. At the same time, it authorized and directed the California DOJ to collect, maintain and analyze criminal statistics beyond the scope of the UCR Program.

Penal Code section 13010[2] requires DOJ to collect from state and local entities, on forms developed by DOJ, data necessary for the "work of the department." (Department is used in the statutes to mean DOJ.) Penal Code section 13010 also provides that DOJ shall: (1) recommend the form and content of records to be maintained by the state and local entities; (2) instruct them in the installation, maintenance and use of such records; (3) process, tabulate, analyze and interpret the data collected; (4) supply data to the FBI and others engaged in the collection of national criminal statistics; (5) present to the Governor an annual report containing the criminal statistics of the preceding calendar year; and (6) present at such other times as the Attorney General may approve reports on special aspects of criminal statistics (Pen. Code, § 13010, subs. (c) – (g)).

Since 1955 Penal Code section 13020 has imposed a duty on city marshals, chiefs of police, district attorneys, city attorneys, city prosecutors having criminal jurisdiction, probation officers and others, including:

> [E]very other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:
> (a) To install and maintain records needed for the correct reporting of statistical data required by him or her.
> (b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.
> (c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title. (Pen. Code, § 13020.)

Since 1955, cities and counties have had the obligation to provide DOJ with criminal statistics used in the UCR Program, as well as those needed for the annual report to the Governor and other reports on special aspects of criminal statistics.

Test Claim Statutes

Annual DOJ report to the Governor: Penal Code section 13012 requires DOJ's annual report to the Governor to contain specified data. It was amended in 1980 to require inclusion of "the number of citizens' complaints received by law enforcement agencies under Section 832.5..." (Stats. 1980, ch. 1340, eff. Sept. 30, 1980.)

Subdivision (c) of section 13012 was amended in 1995 to add the following underlined provision: "The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing

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[2] All references are to the Penal Code unless otherwise indicated.

with criminals or delinquents." It was amended again by Statutes 2001, chapter 486 to add the following subdivision (e):

> (e) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject to a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

Homicide reports: Penal Code section 13014 requires DOJ to collect information on all homicide victims and persons charged with homicides, to adopt and distribute homicide reporting forms and to compile the reported homicide information and annually publish a report about it. Subdivision (b) states: "Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime." (Stats. 1992, ch. 1338.)

Hate crime reports: Penal Code section 13023, as originally enacted in 1989, provided:

> Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability. (Stats. 1989, ch. 1172.)

Section 13023 also requires DOJ to file annual reports on the hate crime data. Statutes 1998, chapter 933 added the requirement to include 'gender' to the victim characteristics, and Statutes 2000, chapter 626 added 'national origin' to the victim characteristics.

Concealed and loaded firearms reports: Penal Code section 12025 defines when a person is guilty of carrying a concealed firearm, defines punishments for doing so, states a minimum sentence with exceptions, and defines lawful possession of the firearm. It was amended by Statutes 1999, chapter 571 to add a reporting provision in subdivision (h) as follows:

> (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.
> (2) The Attorney General shall submit annually a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).
> (3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

Similarly, section 12031 defines when a person is guilty of carrying a loaded firearm in a public place, and when a person is not guilty of doing so. It was amended by Statutes 1999, chapter 571 to add a reporting provision in subdivision (m) as follows:

(1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.
(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).
(3) This subdivision shall remain operative only until January 1, 2005.

Domestic violence reports: Penal Code section 13730 requires local law enforcement agencies to develop a system for recording all domestic violence-related calls for assistance. Enacted by Statutes 1984, chapter 1609, subdivision (a) requires each law enforcement agency to develop a system for recording all domestic violence-related calls for assistance, including whether weapons are involved. Subdivision (b) requires the Attorney General to report annually to the Governor and Legislature on the total number of domestic violence-related calls received by California law enforcement agencies. Subdivision (c) requires law enforcement agencies to develop a domestic violence incident report form for the domestic violence calls, with specified content. It also requires written reports for domestic-violence related calls for assistance.

The Legislature amended subdivision (a) (Stats. 1993, ch. 1230) to state that "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."

Reports for crime victims age 60 or older: Senate Resolution No. 64 (Stats. 1982, ch. 147) states in relevant part:

Resolved by the Senate of the State of California, the Assembly thereof concurring,
That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older; and be it further Resolved,
That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages and victims of crime and to incorporate that information in its crime statistic reporting system…

Criminal Justice Statistics Center Documents: Also included in the claim is the "Criminal Justice Reporting Requirements" (March 2000) and the "Criminal Statistics Reporting Requirements Spreadsheet" both promulgated by the Department of Justice, Criminal Justice Statistics Center. The introduction to the Reporting Requirements (former) document states:

This document provides general guidelines to law enforcement agencies, District Attorneys, Public Defenders, and Probation Departments regarding their reporting requirements to the Department of Justice's Criminal Justice Statistics Center (CJSC). For each reporting requirement there is a brief description of what data is collected (introduction), which agencies are required to report the data (who), the code sections(s) that require reporting (why), the due date of the report (when), and the form or alternative method required to be used to report the data (how).

The Table of Contents of this document has sections on arrests, crimes and clearances, arson offenses, homicides, hate crimes, law enforcement officers killed or assaulted, domestic violence related calls for assistance, violent crimes committed against senior citizens, death in custody, adult probation, juvenile court and probation statistical system, concealable weapons statistical system, hate crime prosecution survey, law enforcement and criminal justice personnel survey, and citizens' complaints against peace officers survey.

The spreadsheet has rows for each of the categories in the Table of Contents above, and columns indicating the reporting agency, reporting frequency, statutory authority, reporting form, and whether electronic reporting is available for each crime or category.

Related Commission Decisions

The Commission has issued four decisions on various versions of Penal Code section 13730 regarding domestic violence reports, as follows.

***Domestic Violence Information*, CSM 4222:** In 1987, the Commission approved this test claim on Penal Code section 13730, as added by Statutes 1984, chapter 1609. The parameters and guidelines for *Domestic Violence Information* authorize 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 suspended Penal Code section 13730 (as added by Stats. 1984, ch. 1609) pursuant to Government Code section 17581. Suspending a statute means the Legislature assigns a zero-dollar appropriation to the program and makes it optional.

***Domestic Violence Training and Incident Reporting*, CSM 96-362-01:** In February 1998, the Commission considered this test claim on the 1995 amendment to Penal Code section 13730, subdivision (c) (Stats. 1995, ch. 965). This amendment requires law enforcement agencies to include in the domestic violence incident report information relating to the use of alcohol or controlled substances by the alleged abuser, and any prior domestic violence responses to the same address.

The Commission determined 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 optional, so 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 language of the suspension statute (Gov. Code, § 17581), the Commission determined, however, that during periods when the state operates without a budget, the original suspension of the mandate would not be in effect. Thus, for the 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 17581, the Commission determined the activities required by the 1995 amendment to Penal Code section 13730 are reimbursable.

In 1998, Government Code section 17581 was amended[3] to close the gap and continue the suspension of programs during periods when the state operates without a budget. The *Domestic Violence Information and Incident Reporting* program has been suspended in every Budget Act since 1992 except for 2003-2004.[4]

***Crime Victims' Domestic Violence Incident Reports*, 99-TC-08:** This claim was decided by Commission on May 29, 2003 (corrected decision issued in September 2003). The Commission found it had no jurisdiction over Penal Code section 13730 (Stats. 1984, ch. 1609, Stats. 1995, ch. 965) because it had already adjudicated the statute in CSM 4222, *Domestic Violence Information,* and in CSM 96-362-01, *Domestic Violence Training and Incident Reporting.* The Commission also found that the mandate had been suspended by the Legislature every year since 1992-1993, making the activities discretionary on the part of local government.

***Crime Victims' Domestic Violence Incident Reports II*, 02-TC-18:** This claim, originally submitted as an amendment to (and severed from) test claim 99-TC-08, was adopted September 27, 2007. The Commission found that effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program for local agencies, on all domestic violence-related calls for assistance, to include on the domestic violence incident report form 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 (Pen. Code, § 13730, subd. (c)(3)).

The Commission noted in the analysis that no test claim had been filed on section 13730 as amended by Statutes 1993, chapter 1230, which added to subdivision (a) "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."

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[3] 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 . . ."

[4] 2007-2008 Budget Act (Stats. 2007, chs. 171 & 172) Item 8885-295-0001, Schedule (3)(aa); 2006-2007 Budget Act (Stats. 2006, chs. 46 & 47) Item 8885-295-0001, Schedule (3) (aa); 2005-2006 Budget Act (Stats. 2005, chs. 38 & 39) Item 8885-295-0001, Schedule (3) (hh); 2004-2005 Budget Act (Stats. 2004, ch. 208) Item 9210-295-0001, Provision 3, Schedule (5); 2002-2003 Budget Act (Stats. 2002, ch. 379), Item 9210-295-0001, Provision 3, Schedule (8); 2001-2002 Budget Act (Stats. 2001, ch. 106), Item 210-295-0001, Provision 3, Schedule (8); 2000-2001 Budget Act (Stats. 2000, ch. 52), Item 210-295-0001, Provision 3, Schedule (8); 1999-2000 Budget Act (Stats. 1999, ch. 50), Item 210-295-0001, Provision 2, Schedule (8).

Claimants' Position

Claimants City of Newport Beach and County of Sacramento filed separate test claims to seek reimbursement based on article XIII B, section 6 of the California Constitution for criminal statistics reporting duties. The test claims do not contain specific activities beyond quoting the language of the test claim statutes. Both test claims estimate that the costs will substantially exceed $1000.00 per year.

Claimants submitted joint comments in March 2003, rebutting those of the Department of Finance and DOJ. Regarding DOJ's comment about the city claimant claiming costs for county entities, claimants note that the claim has been joined by County of Sacramento. Claimants made other substantive comments that are discussed in the analysis below.

Claimant County of Sacramento submitted comments in March 2008 concurring with the draft staff analysis except for the discussion of Penal Code section 13012, which is addressed in the analysis below.

State Agency Positions

Department of Justice: In comments submitted in January 2003, the DOJ's Criminal Justice Statistics Center commented on each test claim statute individually. DOJ stated that the reports in the test claim statutes that are "required" are in Penal Code sections 13012 (citizen complaints and juvenile offender information), 13023 (hate crimes), 12025 (concealed firearms) and 12031 (loaded firearms in a public place).

As to domestic violence reports (§ 13730), DOJ commented that its report has not changed since 1986, and that the amendments to section 13730 relate to local law enforcement's internal documentation that have nothing to do with DOJ reporting requirements.

Regarding homicide reporting in section 13014, DOJ states that the statute did not add new requirements because the same demographic information has been required since at least 1975, and that no additional information was required as a result of Penal Code section 13014. As to reporting on victims of violent crimes who are 60 years of age or older, DOJ states that the Legislature did not mandate local law enforcement to report this information.

For some activities imposed on county district attorneys or county probation officers, DOJ states that "the City of Newport Beach has not explained how it is responsible for costs associated with this reporting requirement."

DOJ's comments are discussed in more detail in the analysis.

Department of Finance: In its October 2002 comments, Finance states that except for one test claim statute, the statutes "may have resulted in a new higher level of service as a result of requiring local law enforcement agencies to keep statistical data on the frequency, types and nature of criminal offenses, in addition to requiring these agencies to submit this data to the Department of Justice."

As to Penal Code section 13730, Finance asserts that the Commission has previously determined it to be a state-mandated program and it was subsequently suspended by the Legislature (Gov. Code, § 17581). Regarding this statute, Finance states:

> Chapter 483, Statutes of 2001 [amending Pen. Code, § 13730] would add an additional requirement to the existing mandate. However, since the mandate is suspended, implementation would be at the option of local government. This interpretation is consistent with a decision adopted by the Commission ... on January 29, 1998, [*Domestic Violence Training and Incident Reporting,* CSM 96-362-01] regarding earlier changes to the same code section. Therefore it does not seem appropriate to include references to these chapters as a part of this claim.

Finance submitted comments on March 7, 2008, concurring with the draft staff analysis.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[5] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[6] "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 because of the taxing and spending limitations that articles XIII A and XIII B impose."[7] 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.[8]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[9]

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

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[5] Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[6] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[7] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

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

[9] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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.[10] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[11] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[12]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[13]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[14] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[15]

Each statute is discussed separately to determine whether it is a reimbursable state-mandate.

Do the test claim statutes or alleged executive orders impose a reimbursable state-mandated program within the meaning of article XIII B, section 6?

Annual DOJ Report to the Governor - Penal Code Section 13012

Penal Code section 13012 requires DOJ's annual report to contain specified data. Section 13012 was amended by Statutes 1980, chapter 1340 (eff. Sept. 30, 1980) to require inclusion of "the number of citizens' complaints received by law enforcement agencies under Section 832.5."

Subdivision (c) of section 13012 was amended in 1995 (ch. 803) to add the following underlined provision: "The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents." It was amended again by Statutes 2001, chapter 486 to add the following subdivision (e):

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[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[12] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[13] *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 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[14] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[15] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

(e) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject to a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

Section 13012 by itself only specifies the content of a DOJ report, not a report by a local agency. It refers to the "annual report of the department provided for in Section 13010..." Section 13010 states: "It shall be the duty of the department [of Justice]: (a) To collect data necessary for the department from all persons and agencies mentioned in Section 13020 and from any other appropriate source;" Section 13020, in turn, requires the local agency reports. Section 13020 was not pled by claimants, nor was section 13010. Nor are these sections incorporated by reference into section 13012, the test claim statute. For these reasons, the Commission has no jurisdiction to make determinations on sections 13010 and 13020.[16]

Claimant County of Sacramento, in March 2008 comments on the draft staff analysis, states that section 13020 was "included as part of the original test claim." Claimant cites the following sentence in the test claim: "Pursuant to Penal Code §§ 13020 and 13021, local law enforcement were required to comply with the DOJ and begin collecting statistical crime data." Claimant states:

> [S]ection 13020 was part of a pre-existing program. It is the expansion of that program which is the subject of the instant test claim. The statute was cited as an overarching requirement. It was not part of the addition of the test claim statutes addressing the various new reports. The section was specifically pleaded, as set forth above, in the opening paragraph of the test claim to set the stage for the statutory changes that created new requirements under the existing program.

Although it is mentioned as preexisting law, the test claim does not expressly plead section 13020. On page 6 of both test claims, claimants cite the "specific statutory sections that contain the mandated activities" and do not mention section 13020. Nor are any of the statutes and chapters that enacted or amended section 13020 cited in the test claim.[17] Thus, staff finds that section 13020 was not pled in the test claim.

Therefore, staff finds that section 13012 (Stats. 1980, ch. 1340, Stats. 1995, ch. 803 & Stats. 2001, ch. 486), by itself, does not impose a state-mandated activity on a local government, and therefore it is not a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

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[16] Sections 13010, 13012 and 13020 were enacted before 1975 and therefore are not subject to article XIII B, section 6, subdivision (a)(3) of the California Constitution.

[17] Section 13020 was enacted by Statutes 1955, chapter 1128, and amended by Statutes 1965, chapter 238, Statutes 1965, chapter 1916, Statutes 1972, chapter 1377, Statutes 1973, chapter 142, Statutes 1973, chapter 1212, Statutes 1979, chapter 255, Statutes 1979, chapter 860, Statutes 1996, chapter 872.

The next issue is whether there is a state mandate to report the citizen complaint and juvenile justice data based on the "Criminal Statistics Reporting Requirements" and "Requirements Spreadsheet" (March 2000) promulgated by the California Department of Justice, Criminal Justice Statistics Center (CJSC). These CJSC documents were pled by claimants in the test claims.

The Commission only has jurisdiction over statutes and executive orders (Gov. Code, §§ 17551 & 17514). Thus, the issue is whether the CJSC documents are executive orders within the meaning of Government Code section 17516. This section defines an executive order as: "any order, plan, requirement, rule, or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government."

The "Criminal Statistics Reporting Requirements" document states, under the first "Introduction:"

> This document provides general guidelines to law enforcement agencies, District Attorneys, Public Defenders, and Probation Departments regarding their reporting requirements to the Department of Justice's Criminal Justice Statistics Center (CJSC). For each reporting requirement there is a brief description of what data is collected (introduction), which agencies are required to report the data (who), the code sections(s) that require reporting (why), the due date of the report (when), and the form or alternative method required to be used to report the data (how).

Under the heading "Citizen Complaints against Peace Officers Survey" there is another introduction that states: "Agencies are to report to DOJ statewide summary information on the number of non-criminal and criminal (misdemeanor and felony) complaints reported by citizens to law enforcement agencies, and the number of complaints that were sustained." Under the heading "Why," only Penal Code section 13012 is quoted.

The Spreadsheet also imposes no requirements, but contains descriptions of the statutory reporting requirements.

Therefore, even if the Commission were to find that the CJSC documents are executive orders within the meaning of Government Code section 17516, the documents still do not mandate the reporting of the citizen complaint information by local agencies. The language used in the document is not mandatory, as it refers to itself as "general guidelines." Therefore, the CJSC documents are not executive orders within the meaning of Government Code section 17516. Also, the CJSC document only references section 13012 for citizen complaints, the statute that specifies the content of DOJ's report. There is no reference to section 13020's local agency reporting requirement in the CJSC document.

As for reporting juvenile justice data, the CJSC document states as follows, under the heading "Juvenile Court and Probation Statistical System:" "Juvenile justice data is to be reported to DOJ to provide information on the administration of juvenile justice in California. Information is collected on a juvenile's progress through the juvenile justice system from probation intake to final case disposition." Under the "Why" portion under juvenile justice, Penal Code section 13020 and Welfare and Institutions Code section 285 are quoted, neither of which are test claim statutes.

There is no other pleading or evidence in the record, such as a letter to law enforcement agencies from DOJ, requiring local agencies to provide statistics for citizen complaints or juvenile justice data.

Thus, staff finds that Penal Code section 13012 (Stats. 1980, ch. 1340, Stats. 1995, ch. 803 & Stats. 2001, ch. 486) and the "Criminal Statistics Reporting Requirements" and Requirements Spreadsheet (March 2000), do not impose state-mandated activities on local agencies to report citizen complaints against peace officers and juvenile justice data to the DOJ, and therefore reimbursement is not required pursuant to article XIII B, section 6 of the California Constitution.

Homicide Reports - Penal Code Section 13014

Section 13014 was added by Statutes 1992, chapter 1338. Subdivision (b) of this section states: "Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime."

Subdivision (a) of section 13014 requires the DOJ to collect information on all homicide victims and persons charged with homicides. It also requires DOJ to adopt and distribute homicide reporting forms, and requires the department to compile the reported homicide information and annually publish a report about it.

Based on the plain meaning of the statute, staff finds that this section 13014, subdivision (b), imposes a state mandate on local law enforcement agencies that are "responsible for the investigation and prosecution of a homicide case" to report to the DOJ the specified data.

Staff also finds that section 13014 constitutes a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public[18] by collecting homicide information for DOJ to report criminal statistics, and because reporting the data is an activity that is unique to local government.

The next issue is whether this reporting is a new program or higher level of service. DOJ states, in comments submitted in January 2003, that section 13014 did not enact anything new because the demographic information it describes was already included on the Supplementary Homicide Report provided to the local entities by the DOJ. DOJ attached a report form with a revision date of July 11, 1975, to "demonstrate that the same demographic information has been required since at least 1975, and that no additional information was required as a result of the addition of Penal Code section 13014."

Claimants, in joint rebuttal comments submitted in March 2003, assert that "there is no state-mandate until the Legislature creates one" and argue as follows:

> [T]his reporting was optional at the direction of the DOJ, who could have changed its reporting requirements at any time. Nor does it change the fact that such reporting is no longer option [sic] in light of the current statutes. Now, neither the local entities nor the DOJ itself can opt not to report that which is required by law. The simple fact that the DOJ has been conscientious about devising its crime

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

statistic reports and has ultimately foreseen the direction of the Legislature, does not defeat the existence of current state mandate [sic] and the constitutional guarantee for reimbursement of costs for local agencies.

The issue is whether the requirement to report homicides existed before the enactment of section 13014 (Stats. 1992, ch. 1338). Staff finds there is insufficient evidence that it did.

The legislative history of section 13014 indicates that "Under current law [¶]...[¶] The Department of Justice is not required by statute to maintain data pertaining to victims of homicide and persons charged with homicide."[19] This statement in the legislative history suggests that reporting the homicide data is a new program or higher level of service.

State mandates are created by either a statute or an executive order (Gov. Code, §§ 17551, subd. (a) & 17514). If DOJ did not require reporting homicide data under the authority of a statute before the test claim statute, then it may have done so under the authority of an executive order, defined as "any order, plan, requirement, rule, or regulation issued by [¶]...[¶] any agency, department, board, or commission of state government." (Gov. Code, § 17516).

There is no evidence of an executive order requiring homicide reports. The form provided by DOJ in its comments only shows that DOJ collected homicide information, but not that local agencies were required to provide it. In fact, the form DOJ submitted with its comments states: "In view of the importance of the homicide classification in crime reporting, it is *requested* that the following supplementary report be filled in and transmitted ..."[20] [Emphasis added.] Since the form uses the non-mandatory language "it is requested that ...." staff finds that reporting this homicide information prior to the test claim statute was not mandatory for local agencies.

Consequently, staff finds that the requirement to provide homicide information as specified in section 13014 is a new program or higher level of service.

Staff also finds that this data collection imposes costs mandated by the state within the meaning of Government Code section 17514. Government Code section 17556 provides that the Commission shall not find costs mandated by the state if certain conditions apply. Staff finds that no exceptions in Government Code 17556 apply to Penal Code section 13014.

Therefore, staff finds that Penal Code section 13014 is a reimbursable mandate for a local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background, beginning July 1, 2001 (the beginning of the reimbursement period for this test claim).

Hate Crime Reports - Penal Code Section 13023

As originally enacted (Stats. 1989, ch. 1172) this section stated:

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[19] Senate Third Reading analysis of Senate Bill No. 1182 (1991-1992 Reg. Sess.) as amended August 28, 1992, p. 1.

[20] Comments from the Department of Justice on Test Claim 02-TC-04, January 28, 2003, Exhibit B.

> Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability.

Section 13023 also requires DOJ to file annual reports to the Legislature on the hate crime data. Statutes 1998, chapter 933 added the requirement to include 'gender' to the victim characteristics, and Statutes 2000, chapter 626 added 'national origin' to the victim characteristics.

The plain language of this statute requires the Attorney General to "direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information ..."

However, the requirement is contingent on funding, as it reads "subject to the availability of adequate funding, the Attorney General shall direct..." The funding in the statute, however, is allocated to the Attorney General, not local entities. In its comments on the test claim, the Attorney General's Office stated that "[a]lthough the hate crime legislation passed in 1989, because of a lack of funding, the DOJ did not begin collecting data until 1994." This indicates that the funding was allocated to the Attorney General's office to collect the data, not on the local agencies to report it.

Therefore, based on the mandatory language in the statute that gives neither DOJ nor local agencies discretion to refuse to comply, staff finds that it is a state mandate for local law enforcement agencies to report to DOJ any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage, where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, gender, national origin, or physical or mental disability.

Staff also finds that section 13023 constitutes a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public[21] by collecting hate crime information for DOJ to report criminal statistics, and because reporting the data is an activity that is unique to local government.

Since this reporting was not required before the test claim statute; staff also finds that it is a new program or higher level of service.

And staff finds that section 13023 imposes costs mandated by the state within the meaning of Government Code section 17514, and no exceptions in Government Code section 17556 apply.

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

Therefore, staff finds that Penal Code section 13023 is a reimbursable state-mandated program for local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin, beginning July 1, 2001 (the beginning of the reimbursement period for this test claim).

Concealed and Loaded Firearms Reports – Penal Code Sections 12025 & 12031

Section 12025 defines when a person is guilty of carrying a concealed firearm, defines punishments for doing so, states a minimum sentence with exceptions, and defines lawful possession of the firearm. It was amended by Statutes 1999, chapter 571 to add a reporting provision in subdivision (h) as follows:

> (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.
> [¶]...[¶]
> (3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

Similarly, section 12031 defines when a person is guilty of carrying a loaded firearm in a public place, and when a person is not guilty of doing so. It was amended by Statutes 1999, chapter 571 to add a reporting provision in subdivision (m) as follows:

> (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.
> [¶]...[¶]
> (3) This subdivision shall remain operative only until January 1, 2005.

Based on the mandatory language in sections 12025, subdivision (h)(1) and 12031, subdivision (m)(1), staff finds that these sections impose state mandates for the district attorney to submit the reports as specified.

Staff also finds that sections 12025, subdivision (h)(1) and 12031, subdivision (m)(1) constitute a program within the meaning of article XIII B, section 6 because they carry out the governmental function of providing a service to the public[22] by collecting concealed and loaded firearm information for DOJ to report criminal statistics, and because reporting the data is an activity that is unique to local government.

These reports were not required before enactment of the test claim legislation, so staff also finds that they are a new program or higher level of service.

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

And staff also finds that the reporting requirements in sections 12025 and 12031 impose costs on district attorneys that are mandated by the state within the meaning of Government Code section 17514, and that no exceptions in Government Code section 17556 apply.

Therefore, staff finds that it is a reimbursable state-mandated program for district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. Staff finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period) until January 1, 2005, the statutory sunset date. (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3).)

Domestic Violence Reports – Penal Code Section 13730

Claimants pled section 13730 and its various amendments since enactment (Stats. 1984, ch. 1609, Stats, 1993, ch. 1230, Stats. 1995, ch. 965, and Stats. 2001, ch. 483). As indicated above in the background under the descriptions of prior Commission decisions, the Commission has made determinations on all these versions of section 13730 except for Statutes 1993, chapter 1230.

Based on these prior determinations, staff finds that the Commission does not have jurisdiction over the other amended versions (i.e., the 1984, 1995 & 2001 amendments) of section 13730. An administrative agency does not have jurisdiction to rehear a decision that has become final.[23]

Statutes 1993, chapter 1230 added the following to subdivision (a) of section 13730: "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."

In its comments on the test claim, Finance states:

> Chapter 483, Statutes of 2001 [amending Pen. Code, § 13730] would add an additional requirement to the existing mandate. However, since the mandate is suspended, implementation would be at the option of local government. This interpretation is consistent with a decision adopted by the Commission ... on January 29, 1998, [*Domestic violence Training and Incident Reporting,* CSM 96-362-01] regarding earlier changes to the same code section. Therefore it does not seem appropriate to include references to these chapters as apart of this claim.

Staff disagrees. In order to be suspended by the Legislature, a statute must have "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..." (Gov. Code, § 17581.)

This 1993 amendment to section 13730 has never been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring local

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[23] *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

agency reimbursement, as required by Government Code section 17581. Therefore, the 1993 amendment is not eligible for suspension by the Legislature.

Thus, based on the mandatory language in the statute, staff finds that section 13730, as amended by Statutes 1993, chapter 1230, imposes a state mandate on local law enforcement agencies to support domestic violence related calls for assistance with a written incident report. Staff also finds that this section, as amended by Statutes 1993, chapter 1230, constitutes a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public[24] by requiring written reports for domestic violence-related calls for assistance, and because making the reports is an activity that is unique to local government.

The next issue is whether the mandate is a new program or higher level of service. Preexisting law, before the 1993 amendment, had been suspended (pursuant to Gov. Code, § 17581) and made voluntary every year beginning fiscal year 1992-1993 as indicated above, making the amendment a newly required activity.

Moreover, preexisting law states:

> Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident (Pen. Code, § 13730, subd. (c)).

Preexisting law only requires incident reports for "incidents of domestic violence" whereas the 1993 amendment requires written incident reports for "calls for assistance." Therefore, staff finds that the 1993 amendment to section 13730 is a new program or higher level of service.

Staff also finds that there are costs mandated by the state, as defined by Government Code section 17514, for this mandate, and that no exceptions to reimbursement in Government Code section 17556 apply.

Therefore, staff finds that it is a reimbursable state-mandated program for local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report, beginning July 1, 2001 (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

Crime Reports for Persons 60 or Older - Senate Resolution No. 64 (Stats. 1982, ch. 147)

Senate Resolution 64 (Stats. 1982, ch. 147) states in relevant part:

> Resolved by the Senate of the State of California, the Assembly thereof concurring,
> That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older; and be it further Resolved,

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

That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages and victims of crime and to incorporate that information in its crime statistic reporting system...

Staff finds that this resolution is not a state mandate within the meaning of article XIII B, section 6 of the California Constitution. First, it "requests" but does not mandate that the victim information be provided to DOJ, a fact pointed out by DOJ in its comments submitted on the test claim (and the form it promulgates to local agencies also "requests" the information). Second, the California Supreme Court has held that legislative resolutions do not have the force of law.[25]

Therefore, staff finds that Senate Resolution No. 64 (Stats. 1982, ch. 147) is not a state mandate within the meaning of article XIII B, section 6 of the California Constitution.

CONCLUSION

For the reasons discussed above, staff finds that, beginning July 1, 2001, the test claim statutes cited below impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, §13014).
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, §13023).
- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. Staff finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

Staff also finds that all other test claim statutes and alleged executive order do not constitute a reimbursable state-mandated program. Neither Penal Code section 13012, nor the "Criminal

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[25] *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 709.

Statistics Reporting Requirements" and "Requirements Spreadsheet" (March 2000), impose state-mandated requirements on local agencies or school districts.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

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EXHIBIT A

State of California
COMMISSION ON STATE MANDATES
[illegible]0 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2 91)

TEST CLAIM FORM

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COMMISSION ON STATE MANDATES

Claim No. 02-TC-04

Local Agency or School District Submitting Claim

City of Newport Beach

Contact Person

Allan P. Burdick/Juliana F. Gmur (MAXIMUS, INC.)

Telephone No.

(916) 485-8102
Fax (916) 485-0111

Address

4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Representative Organization to be Notified

[illegible]eague of California Cities

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB 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.

Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999; Senate Resolution 64, Chapter 147, 1982; California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000; and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

GLEN EVERROAD, Revenue Manager

Telephone No.

(949) 644-3141

Signature of Authorized Representative

Date:

19 Sept 02

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
City of Newport Beach

Crime Statistic Reports for the Department of Justice

Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999; Senate Resolution 64, Chapter 147, 1982; California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000; and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

Beginning in 1955, the Legislature, through enactments in the Penal Code, set forth requirements that the Department of Justice (DOJ) must prepare statistical reports for review. Pursuant to Penal Code §§13020 and 13021, local law enforcement were required to comply with the DOJ and begin collecting statistical crime data. Reports were then generated and submitted to the DOJ either monthly or annually depending on the nature of the information the report contained.. At that time, only a few reports were required. In the late 1970's and through to present time, these reports have increased in number and complexity. Now, at least 10 types of reports are due monthly and three more due annually reporting on various issues such as homicide, domestic violence, citizen complaints, and hate crimes.

Section 13012 of the Penal Code, added in 1955, sets forth the required contents of an annual report by the DOJ. The DOJ, in turn requires all local agencies with police powers including sheriffs, police, District Attorneys and probation officers, to gather and to report general statistical information on all adult offenders annually. Chapter 1340, Statutes of 1980, added the requirement that local agencies report the number of citizens' complaints, the number of complaints that alleged criminal conduct, and the number of complaints within each category of crime. Chapter 803, Statutes of 1995, expanded the

reporting to include all juvenile offenders. Finally Chapter 468, Statutes of 2001, added that the report on juveniles must include any administrative action taken by law enforcement or correctional agencies dealing with minors in the juvenile justice system where the minor had a criminal case either transferred to or initiated in adult criminal court. The DOJ requires report number CJSC 724 be filed annually.

Penal Code §13012 currently reads:

> The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:
> (a) The amount and the type of offenses known to public authorities.
> (b) The personal and social characteristics of criminals and delinquents.
> (c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.
> (d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal and correctional agencies, , including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.
> (e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.
> It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

Section 13014 of the Penal Code, added by Chapter 1338, Statutes of 1992, requires all local entities responsible for the investigation or prosecution of homicides submit a report

to the DOJ containing victim and offender demographic information. The DOJ requires report number BCS 15 be submitted monthly.

Penal Code §13014 reads, in pertinent part:

> (b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime including age, gender, race and ethnic background.

Section 13023 of the Penal Code, added by Chapter 1172, Statutes of 1989, requires local law enforcement agencies to report criminal acts or attempted criminal acts commonly referred to as hate crimes. The DOJ requires that sheriffs and police file its Agency Crime Report monthly and District attorneys file report number CJSC 5 on hate crime prosecution annually. Chapter 933, Statutes of 1998, expanded the parameters of a hate crime to include gender. Chapter 626, Statutes of 2001, further expanded the parameters to include national origin.

Penal Code §13023 currently reads:

> Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be proscribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

Section 12025 of the Penal Code, added in 1953, makes carrying a concealed weapon a crime. This statute has been amended several times but most recently, Chapter 571, statutes of 1999, added a reporting requirement for local District Attorneys for an annual report. The DOJ requires that report number CJSC 4 be submitted monthly.

Penal Code §12025 reads, in pertinent part:

> (h)(1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney

> General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offence charged in the same complaint, indictment, or information.

Section 12031 of the Penal Code, added in 1967, makes carrying a loaded firearm a crime. This statute has been amended nearly every year but most recently, Chapter 571, statutes of 1999, added a reporting requirement for local District Attorneys for an annual report. The DOJ requires that report number CJSC 4 be submitted monthly.

Penal Code §12031 reads, in pertinent part:

> (m)(1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offence charged in the same complaint, indictment, or information.

Section 13730 of the Penal Code, added by Chapter 1609, Statutes of 1984, requires that local law enforcement develop a system for recording all domestic violence-related calls. Chapter 1230, Statutes of 1993, amended the statute to require a written incident report. Chapter 965, Statutes of 1995, expanded the information be recorded to include whether the abuser was under the influence or if law enforcement had had prior calls to that same address with the same parties. Chapter 483, Statutes of 2001, further required a recordation of whether the officer at the scene had to inquire regarding the presence of firearms or other deadly weapon. The compiled information is required to be submitted in report number CJSC 715 to the DOJ monthly.

Penal Code §13730 currently reads:

> (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 by 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 complied 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 call received by agency, city, and county.

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

Senate Resolution 64, Chapter 147, Statues of 1982, requests local law enforcement to modify data gathering procedures to collect information on the number of victims of crime who are 60 years of age or older. The DOJ requires that reports concerning violent crime against senior citizens are submitted monthly report number BCS 727.

Although some of the legislation places the duty to report to the Legislature squarely on the shoulders of the State Department of Justice, the DOJ is quick to pass the brunt of this effort onto local agencies. The net effect of this legislation is to require local law enforcement to act as statisticians and data collectors for the state Department of Justice. Thus, the total costs of these claims are reimbursable.

The City of Newport Beach does not have full estimates on the costs of this program, but same are substantially in excess of $1000 per year.

B. LEGISLATIVE HISTORY PRIOR TO 1975

Prior to 1975, certain types of reports were required to be filed with the DOJ. These reports included information on arrests, arson, crimes and clearances, law enforcement personnel killed or assaulted, deaths of individuals while in custody, probation, and law enforcement and criminal justice personnel surveys.

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of the aforementioned Chapters which mandated reports in other areas. These Chapters created an expanded list of reporting requirements including information on domestic violence, homicide, hate crimes, concealed weapons, loaded firearms, violent crimes against senior citizens and citizens' complaints.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in Penal Code §§13012, 13014, 13023, 12025, 12031, and 13730. These sections directly relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The City of Newport Beach does not have full estimates on the costs of discharging this program, but estimates that the costs will substantially exceed $1000.00 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by City of Newport Beach as a result of the statute on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

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 XIIIB of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles* v. *State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

Only local government employs law enforcement. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes to avail itself of a collection of crime statistics. These statistics are not only for the use of the Legislature but also for use by state agencies for reports and implementation of policy regarding the prevention of crime and delinquency.

In summary, the statutes mandates that the City of Newport Beach bear the burden of obtaining the necessary information, distilling that information into reports and submitting same to the DOJ mostly on a monthly basis. The City of Newport Beach believes that the additional reporting requirements satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. 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.

4. 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.

5. 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.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.

7. 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.

None of the above disclaimers have any application to the test claim herein stated by the City of Newport Beach.

CONCLUSION

The enactment of Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999 and Senate Resolution 64, Chapter 147, 1982 imposed a new state mandated program and cost on the City of Newport Beach by requiring additional reports be submitted generally on a monthly basis to the DOJ. To create such reports, local law informant is placed in the position of having to compile various data and complete a laundry list of reports, each with a specific timeline for submission. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1: Chapter 1340, Statutes of 1980
Exhibit 2: Chapter 803, Statutes of 1995
Exhibit 3: Chapter 468, Statutes of 2001

Exhibit 4:	Chapter 1338, Statutes of 1992
Exhibit 5:	Chapter 1609, Statutes of 1984
Exhibit 6:	Chapter 1230, Statutes of 1993
Exhibit 7:	Chapter 965, Statutes of 1995
Exhibit 8:	Chapter 483, Statutes of 2001
Exhibit 9:	Chapter 1172, Statutes of 1989
Exhibit 10:	Chapter 933, Statutes of 1998
Exhibit 11:	Chapter 626, Statutes of 2000
Exhibit 12:	Chapter 571, Statutes of 1999
Exhibit 13:	Senate Resolution 64, Chapter 147, 1982
Exhibit 14:	California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000
Exhibit 15:	California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000

CLAIM CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 18 day of September, 2002, at City of Newport Beach, California, by:

Glen Everroad
Revenue Manager
City of Newport Beach

DECLARATION OF GLEN EVERROAD

I, Glen Everroad, make the following declaration under oath:

I am the Revenue Manager for City of Newport Beach. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the City of Newport Beach's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "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 stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 10 day of September, 2002, at Newport Beach, California.

Glen Everroad
Revenue Manager
City of Newport Beach

region, or county office shall be made to insure the highest quality educational offerings.

(n) Appropriate qualified staff are employed, consistent with credentialing requirements, to fulfill the responsibilities of the local plan and that positive efforts to employ qualified handicapped individuals are made.

(o) Regular and special education personnel are adequately prepared to provide educational instruction and services to individuals with exceptional needs.

SEC. 38. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act 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.

SEC. 39. (a) The provisions of this act shall become operative on July 1, 1981, except as specified in subdivision (b).

(b) Sections 7, 16, 19, 24, 25, 32, 33, 34, and 35 of this act shall become operative on January 1, 1981.

CHAPTER 1340

An act to amend Section 7522 of the Business and Professions Code, to amend Section 8325 of the Health and Safety Code, to amend Sections 241, 243, 245, 830.1, 830.2, 830.3, 830.4, 830.5, 830.6, 831, 832.4, 12027, 12031, and 13012 of, to add Sections 830.31, 830.7, 830.8, and 830.10 to, and to repeal Sections 243.2, 243.4, 245.2, 245.4, 830.31, 830.35, 830.36, 830.5a, 830.7, 830.10, and 830.11 of, the Penal Code, to amend Sections 165, 1808.4, 2416, 22651, 22653, 22654, 22655, 22656, and 22702 of, and to repeal Sections 165.3, 165.4, 22657.5, and 22659 of, the Vehicle Code, and to amend Section 5008 of the Welfare and Institutions Code, relating to peace officers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1980. Filed with Secretary of State September 30, 1980.]

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

SECTION 1. Section 7522 of the Business and Professions Code is amended to read:

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship, provided that such person at no time carries or uses any deadly weapon in the performance of

his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while such officer or employee is engaged in the performance of his official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided such part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his duties as such attorney at law.

(g) A licensed collection agency or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) The legal owner of personal property which has been sold under a conditional sales agreement or a mortgagee under the terms of a chattel mortgage.

(j) Any bank subject to the jurisdiction of the Superintendent of Banks of the State of California or the Comptroller of Currency of the United States.

(k) A person engaged solely in the business of securing information about persons or property from public records.

(l) A peace officer of this state or a political subdivision thereof

while such peace officer is employed by a private employer to engage in off-duty employment in accordance with the provisions of Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who contracts for his or her services or the services of others as a private investigator or private patrol operator.

(m) A retired peace officer of the state or political subdivision thereof when such retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7514.1 or 7514.2. Such officer may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of subdivision (a) of Section 12027 of the Penal Code or paragraph (1) of subdivision (b) of Section 12031 of the Penal Code or has met the requirements set forth in Section 12033 of the Penal Code. However, nothing herein shall exempt such retired peace officer who contracts for his or her services or the services of others as a private investigator or private patrol operator.

SEC. 2. Section 8325 of the Health and Safety Code is amended to read:

8325. Persons designated by a cemetery authority have the powers of arrest as provided in Section 830.7 of the Penal Code for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property.

SEC. 2.1. Section 241 of the Penal Code is amended to read:

241. An assault is punishable by fine not exceeding five hundred dollars ($500), or by imprisonment in the county jail not exceeding six months, or by both. When it is committed against the person of a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, or a fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, the offense shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 2.2. Section 243 of the Penal Code is amended to read:

243. A battery is punishable by fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. When it is committed against the person of a peace officer, as that term is

defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, or a fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, the offense shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

When it is committed against a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or a fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, and an injury is inflicted on such peace officer or fireman, the offense shall be punished by imprisonment in the county jail for a period of not more than one year, or by a fine or not more than one thousand dollars ($1,000), or by imprisonment in the state prison for 16 months, or two or three years. When it is committed against a person and serious bodily injury is inflicted on such person, the offense shall be punished by imprisonment in the county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

As used in this section "injury" means any physical injury which requires professional medical treatment.

SEC. 3. Section 243.2 of the Penal Code is repealed.

SEC. 3.1. Section 243.4 of the Penal Code is repealed.

SEC. 3.2. Section 245 of the Penal Code is amended to read:

245. (a) Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment. When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument, and such weapon or instrument is owned by such person, the court may, in its discretion, order that the weapon or instrument be deemed a nuisance and shall be confiscated and destroyed in the manner provided by Section 12028.

(b) Every person who commits an assault with a deadly weapon or instrument or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that such victim is a peace officer or fireman

engaged in the performance of his duties, when such peace officer or fireman is engaged in the performance of his duties shall be punished by imprisonment in the state prison for three, four, or five years.

As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commmencing with Section 830) of Title 3 of Part 2 of this code.

SEC. 4. Section 245.2 of the Penal Code is repealed.

SEC. 4.5. Section 245.4 of the Penal Code is repealed.

SEC. 5. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid as such, of a county, any policeman of a city, any policeman of a district authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, regularly employed and paid as such, of a judicial district, or any inspector or investigator regularly employed and paid as such in the office of a district attorney, is a peace officer. The authority of any such peace officer extends to any place in the state:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs him; or

(2) Where he has the prior consent of the chief of police, or person authorized by him to give such consent, if the place is within a city or of the sheriff, or person authorized by him to give such consent, if the place is within a county; or

(3) As to any public offense committed or which there is probable cause to believe has been committed in his presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense.

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and such investigators who are designated by the Attorney General are peace officers. The authority of any such peace officer extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

SEC. 6. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the California Highway Patrol provided, that the primary duty of any such peace officer shall be the enforcement of the provisions of the Vehicle Code or of any other law relating to the use or operation of vehicles upon the highways, as that duty is set forth in the Vehicle Code.

(b) Any member of the California State Police Division provided, that the primary duty of any such peace officer shall be the protection of state properties and occupants thereof.

(c) Members of the California National Guard have the powers of

peace officers when they are (1) called or ordered into active state service by the Governor pursuant to the provisions of Section 143 or 146 of the Military and Veterans Code, (2) serving within the area wherein military assistance is required, and (3) directly assisting civil authorities in any of the situations specified in Section 143 or 146. The authority of any such peace officer extends to the area wherein military assistance is required as to a public offense committed or which there is reasonable cause to believe has been committed within that area. The requirements of Section 1031 of the Government Code are not applicable under such circumstances.

(d) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code provided, that the primary duty of any such peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(e) A member of the California State University and College Police Departments appointed pursuant to Section 89560 of the Education Code provided, that the primary duty of any such peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(f) Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided that the primary duty of any such peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of such persons, and the coordination of such activities with other criminal justice agencies.

(g) Members of the Wildlife Protection Branch of the Department of Fish and Game, provided that the primary duty of such deputies shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(h) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

SEC. 7. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Such peace officers may carry firearms only if authorized and under such terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of the provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control,

provided that the primary duty of any such peace officer shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs, and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, and designated by the Director of Consumer Affairs, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Employees or classes of employees of the Department of Forestry and voluntary fire wardens as are designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of such code.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 1655 of such code.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 13104 of such code.

(g) Inspectors of the Food and Drug Section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 216 of such code.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of any such peace officer shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, provided that the primary duty of any such peace officer shall be the enforcement of the law relating to the duties of his department, or office.

(j) Marshals and police appointed by the Director of Parks and Recreation pursuant to Section 3324 of the Food and Agricultural Code, provided that the primary duty of any such peace officer shall

be the enforcement of the law as prescribed in Section 3324 of the Food and Agricultural Code.

(k) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and such investigators as designated by him, provided that the primary duty of such investigators shall be enforcement of the provisions of Section 556 of the Insurance Code.

SEC. 8. Section 830.31 of the Penal Code is repealed.

SEC. 9. Section 830.31 is added to the Penal Code, to read:

830.31. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Such peace officers may carry firearms only if authorized and under such terms and conditions as are specified by their employing agency.

(a) Members of an arson-investigating unit, regularly employed and paid as such, of a fire protection agency of the state, of a county, city, or district, and members of a fire department or fire protection agency of the state, or a county, city, or district regularly paid and employed as such, provided that the primary duty of arson investigators shall be the detection and apprehension of persons who have violated any fire law or committed insurance fraud, and the primary duty of fire department or fire protection agency members other than arson investigators when acting as peace officers shall be the enforcement of laws relating to fire prevention and fire suppression.

(b) Persons designated by a local agency as park rangers, and regularly employed and paid as such, provided that the primary duty of any such peace officer shall be the protection of park property and the preservation of the peace therein.

(c) Members of a community college police department appointed pursuant to Section 72330 of the Education Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as prescribed in Section 72330 of the Education Code.

(d) A welfare fraud or child support investigator or inspector, regularly employed and paid as such by a county, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of the Welfare and Institutions Code and Section 270 of this code.

(e) The coroner and deputy coroners, regularly employed and paid as such, of a county, provided that the primary duty of any such peace officer are those duties set forth in Sections 27469 and 27491 to 27491.4, inclusive, of the Government Code.

(f) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code, provided that the primary duty of any such

peace officer shall be the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties with respect to patrons, employees, and properties of the district.

(g) Harbor police regularly employed and paid as such by a county, city or district other than peace officers authorized under Section 830.1, and the port warden and special officers of the Harbor Department of the City of Los Angeles, provided that the primary duty of any such peace officer shall be the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(h) Persons designated as a security officer by a municipal utility district pursuant to Section 12820 of the Public Utilities Code, provided that the primary duty of any such officer shall be the protection of the properties of the utility district and the protection of the persons thereon.

SEC. 10. Section 830.35 of the Penal Code is repealed.

SEC. 11. Section 830.36 of the Penal Code is repealed.

SEC. 12. Section 830.4 of the Penal Code is amended to read:

830.4. The following persons are peace officers while engaged in the performance of their duties in or about the properties owned, operated, or administered by their employing agency, or when they are required by their employer to perform their duties anywhere within the political subdivision which employs them. Such officers shall also have the authority of peace officers anywhere in the state as to an offense committed, or which there is probable cause to believe has been committed, with respect to persons or property the protection of which is the duty of such officer or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is an immediate danger to person or property or of the escape of the perpetrator of the offense. Such peace officers may carry firearms only if authorized by and under such terms and conditions as are specified by their employing agency:

(a) Security officers of the California State Police Division.

(b) The Sergeant at Arms of each house of the Legislature.

(c) Bailiffs of the Supreme Court and of the courts of appeal.

(d) Guards and messengers of the Treasurer's office.

(e) Officers designated by the hospital administrator of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services pursuant to Section 4313 or 4493 of the Welfare and Institutions Code.

(f) Any railroad policeman commissioned by the Governor pursuant to Section 8226 of the Public Utilities Code.

(g) Persons employed as members of a security department of a school district pursuant to Section 39670 of the Education Code.

(h) Security officers of the County of Los Angeles.

(i) Housing authority patrol officers employed by the housing

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authority of a city, district, county, or city and county.

(j) Transit police officers of a county, city, or district.

(k) Any person regularly employed as an airport officer by the city or county operating the airport.

SEC. 12.5. Section 830.4 of the Penal Code is amended to read:

830.4. The following persons are peace officers while engaged in the performance of their duties in or about the properties owned, operated, or administered by their employing agency, or when they are required by their employer to perform their duties anywhere within the political subdivision which employs them. Such officers shall also have the authority of peace officers anywhere in the state as to an offense committed, or which there is probable cause to believe has been committed, with respect to persons or property the protection of which is the duty of such officer or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is an immediate danger to person or property or of the escape of the perpetrator of the offense. Such peace officers may carry firearms only if authorized by and under such terms and conditions as are specified by their employing agency:

(a) Security officers of the California State Police Division.

(b) The Sergeant at Arms of each house of the Legislature.

(c) Bailiffs of the Supreme Court and of the courts of appeal.

(d) Guards and messengers of the Treasurer's office.

(e) Officers designated by the hospital administrator of a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, and police officers designated by him pursuant to Section 4313 or 4493 of the Welfare and Institutions Code.

(f) Any railroad policeman appointed pursuant to Section 8226 of the Public Utilities Code.

(g) Persons employed as members of a security department of a school district pursuant to Section 39670 of the Education Code.

(h) Security officers of the County of Los Angeles.

(i) Housing authority patrol officers employed by the housing authority of a city, district, county, or city and county.

(j) Transit police officers of a county, city, or district.

(k) Any person regularly employed as an airport officer by the city or county operating the airport.

SEC. 13. Section 830.5 of the Penal Code is amended to read:

830.5. The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Sections 8597, 8598, and 8617 of the Government Code. Such peace officer may carry firearms only if authorized and under such terms and conditions as are specified by their employing agency:

(a) A parole officer of the Department of Corrections or the

Department of the Youth Authority, probation officer, or deputy probation officer. Except as otherwise provided in this subdivision, the authority of such parole or probation officer shall extend only (1) to conditions of parole or of probation by any person in this state on parole or probation; (2) to the escape of any inmate or ward from a state or local institution; (3) to the transportation of such persons; and (4) to violations of any penal provisions of law which are discovered in the course of and arise in connection with his employment.

(b) A correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections or employee of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency or employee of the Department of the Youth Authority designated by the Director of the Department of the Youth Authority, any superintendent, supervisor, or employee having custody of wards in an institution operated by a probation department, and any transportation officer of a probation department.

SEC. 14. Section 830.5a of the Penal Code is repealed.

SEC. 15. Section 830.6 of the Penal Code is amended to read:

830.6. (a) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city policeman, a deputy sheriff, a reserve police officer of a regional park district, or a deputy of the Department of Fish and Game, and is assigned specific police functions by such authority, such person is a peace officer; provided, such person qualifies as set forth in Section 832.6, and provided further, that the authority of such person as a peace officer shall extend only for the duration of such specific assignment.

(b) Whenever any person is summoned to the aid of any uniformed peace officer, such person shall be vested with such powers of a peace officer as are expressly delegated him by the summoning officer or as are otherwise reasonably necessary to properly assist such officer.

SEC. 15.5. Section 830.6 of the Penal Code is amended to read:

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city policeman, a deputy sheriff, a reserve police officer of a regional park district, or a deputy of the Department of Fish and Game, and is assigned specific police functions by such authority, such person is a peace officer; provided, such person qualifies as set forth in Section 832.6, and provided further, that the authority of such person as a peace officer shall extend only for the duration of such specific assignment.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city policeman, a deputy sheriff, or a reserve police officer of a regional

park district, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by such authority, such person is a peace officer; provided such person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6, and provided further, that the authority of such person shall include the full powers and duties of a peace officer as provided by Section 830.1.

(b) Whenever any person is summoned to the aid of any uniformed peace officer, such person shall be vested with such powers of a peace officer as are expressly delegated him by the summoning officer or as are otherwise reasonably necessary to properly assist such officer.

SEC. 16. Section 830.7 of the Penal Code is repealed.

SEC. 17. Section 830.7 is added to the Penal Code, to read:

830.7. The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 during the course and within the scope of their employment, provided that they receive a course in the exercise of such powers pursuant to Section 832:

(a) Persons designated by a cemetery authority pursuant to Section 8325 of the Health and Safety Code.

(b) Persons regularly employed as security officers for institutions of higher education, recognized under subdivision (a) of Section 94310 of the Education Code, provided that such institution has concluded a memorandum of understanding, permitting the exercise of such authority, with the sheriff or chief of police within whose jurisdiction the institution lies.

SEC. 18. Section 830.8 is added to the Penal Code, to read:

830.8. (a) Federal criminal investigators are not California peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the powers of a peace officer specified in Section 5150 of the Welfare and Institutions Code for violations of state or local laws provided that such investigators are engaged in the enforcement of federal criminal laws and exercise such arrest powers only incidental to the performance of their federal duties. Such investigators, prior to the exercise of such arrest powers shall have been certified by their agency heads as having satisfied the training requirements of Section 832.

(b) Duly authorized federal employees, are peace officers, when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction such property is situated.

SEC. 19. Section 830.10 of the Penal Code is repealed.

SEC. 20. Section 830.10 is added to the Penal Code, to read:

830.10. Any uniformed peace officer shall wear a badge, nameplate, or other device which bears clearly on its face the

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identification number or name of such officer.

SEC. 21. Section 830.11 of the Penal Code is repealed.

SEC. 22. Section 831 of the Penal Code is amended to read:

831. (a) A custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of a city or county who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein.

(b) A custodial officer shall have no right to carry or possess firearms in the performance of his prescribed duties.

(c) Every person, prior to actual assignment as a custodial officer, shall have satisfactorily completed the Commission on Peace Officer Standards and Training courses specified in Section 832 and the jail operations training course created under the minimum standards for local detention facilities established by the Board of Corrections pursuant to Section 6030.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

SEC. 23. Section 832.4 of the Penal Code is amended to read:

832.4. Any undersheriff or deputy sheriff of a county, any policeman of a city, and any policeman of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his employment in order to continue to exercise the powers of a peace officer after the expiration of such 18-month period.

SEC. 24. Section 12027 of the Penal Code is amended to read:

12027. Section 12025 does not apply to or affect any of the following:

(a) Peace officers listed in Section 830.1 or 830.2 whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or

preserving the peace while he is actually engaged in assisting such officer.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at anytime subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this subdivision.

A retired peace officer shall petition the issuing agency for renewal of his or her privilege to carry a concealed firearm every five years. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this subdivision and the date when the endorsement is to be reviewed again.

(b) The possession or transportation by any merchant of unloaded firearms as merchandise.

(c) Members of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive such weapons from the United States or this state.

(d) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

(e) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such target ranges, or while going to and from such ranges.

(g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

(h) Members of any club or organization organized for the purpose of collecting and displaying antique or historical pistols, revolvers or other firearms, while such members are displaying such weapons at meetings of such clubs or organizations or while going to and from such meetings, or individuals who collect such firearms not designed to fire, or incapable of firing fixed cartridges or fixed shot shells, or other firearms of obsolete ignition type for which ammunition is not readily available and which are generally recognized as collector's items, provided such firearm is kept in the trunk. If the vehicle is not equipped with a trunk, such firearm shall be kept in a locked container in an area of the vehicle other than the utility or glove compartment.

SEC. 25. Section 12031 of the Penal Code is amended to read:

12031. (a) Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his person or in a

vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this paragraph. A retired peace officer shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm in public every five years. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this paragraph and the date when the endorsement is to be reviewed again.

(2) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(3) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of such clubs.

(4) The carrying of concealable weapons by persons who are authorized to carry such weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4 of the Penal Code.

(5) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after such date, if they have received a Firearms Qualification Card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (i) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (ii) must be not less than 18 years of age nor more than 40 years of age, (iii) must possess physical qualifications prescribed by the commission, and (iv) are designated by the police commission as the

owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry such weapons, or by persons who are authorized to carry such weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to such section.

(3) Harbor policemen designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. Such certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his power as a peace officer, and who is employed while not on duty as such peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (i) if hired prior to January 1, 1977; or (ii) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators, private patrol operators, and alarm company operators who are licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watchmen employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated as such by persons engaged in any lawful business, while actually engaged in protecting and preserving the property of their employers and uniformed alarm agents employed by an alarm company operator while on duty. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their name.

(6) Uniformed employees of private patrol operators and uniformed employees of private investigators licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment as private patrolmen or private

investigators.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any person in lawful possession of private property from having a loaded firearm on such property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting is not prohibited by the city council.

(j) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or another is in immediate danger and that the carrying of such weapon is necessary for the preservation of such person or property.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his place of residence, including any temporary residence or campsite.

SEC. 26. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing:

(a) The amount and the types of offenses known to the public authorities;

(b) The personal and social characteristics of criminals and delinquents; and

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(c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions in dealing with criminals or delinquents.

(d) The number of citizens complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of such complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of such statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 26.5. Section 165 of the Vehicle Code is amended to read:

165. An authorized emergency vehicle is:

(a) Any publicly owned ambulance, lifeguard or lifesaving equipment or any privately owned ambulance used to respond to emergency calls and operated under a license issued by the Commissioner of the California Highway Patrol.

(b) Any publicly owned vehicle operated by the following persons, agencies, or organizations:

(1) Any federal, state, or local agency or department employing peace officers as that term is defined in Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, for use by such officers in the performance of their duties.

(2) Any forestry or fire department of any public agency or fire department organized as provided in the Health and Safety Code.

(c) Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment.

(d) Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Office of Emergency Services or by any public agency or industrial fire department to which the Office of Emergency Services has assigned such vehicle.

(e) Any vehicle owned or operated by any department or agency of the United States government when such vehicle is used in responding to emergency fire, ambulance, or lifesaving calls.

(f) Any vehicle for which an authorized emergency vehicle permit has been issued by the Commissioner of the California Highway Patrol.

SEC. 27. Section 165.3 of the Vehicle Code is repealed.

SEC. 28. Section 165.4 of the Vehicle Code is repealed.

SEC. 29. Section 1808.4 of the Vehicle Code is amended to read:

(f) When any vehicle, except any highway maintenance or construction equipment, is left unattended for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade.

(g) When the person or persons in charge of a vehicle upon a highway are by reason of physical injuries or illness incapacitated to such an extent as to be unable to provide for its custody or removal.

(h) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is by this code or other law required or permitted to take, and does take, the person arrested before a magistrate without unnecessary delay.

(i) When any vehicle registered in a foreign jurisdiction is found upon a highway and it is known to have been issued five or more notices of parking violation over a period of five or more days, to which the owner or person in control of the vehicle has not responded, the vehicle may be impounded until such person furnishes to the impounding law enforcement agency evidence of his identity and an address within this state at which he can be located and satisfactory evidence that bail has been deposited for all notices of parking violation issued for the vehicle. A notice of parking violation issued to such a vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of requiring satisfactory evidence that such bail has been deposited, the impounding law enforcement agency may, in its discretion, issue a notice to appear for the offenses charged, as provided in Article 2 (commencing with Section 40500) of Chapter 2 of Division 17. In lieu of either furnishing satisfactory evidence that such bail has been deposited or accepting the notice to appear, such person may demand to be taken without unnecessary delay before a magistrate within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his identity and an address within this state at which he can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway or a portion thereof is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that such a vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway or any portion thereof is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with such use or movement, and signs giving notice that such a vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities by resolution or ordinance have prohibited such parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

SEC. 32. Section 22653 of the Vehicle Code is amended to read:

22653. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, other than an employee directing traffic or enforcing parking laws and regulations, may remove a vehicle from private property located within the territorial limits in which the officer is empowered to act, when a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(b) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may, after a reasonable period of time, remove a vehicle from private property located within the territorial limits in which the officer is empowered to act, if the vehicle has been involved in, and left at the scene of, a traffic accident and no owner is available to grant permission to remove the vehicle. This subdivision does not authorize the removal of a vehicle where the owner has been contacted and has refused to grant permission to remove the vehicle.

SEC. 33. Section 22654 of the Vehicle Code is amended to read:

22654. (a) Whenever any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or other employee directing traffic or enforcing parking laws and regulations, finds a vehicle standing upon a highway, located within the territorial limits in which the officer or employee is empowered to act, in violation of Sections 22500 and 22504, the officer or employee may move the vehicle or require the driver or other person in charge of the vehicle to move it to the nearest available position off the roadway or to the nearest parking location, or may remove and store the vehicle if moving it off the roadway to a parking location is impracticable.

(b) Whenever such an officer or employee finds a vehicle standing upon a street, located within the territorial limits in which the officer or employee is empowered to act, in violation of a traffic ordinance enacted by local authorities to prevent flooding of adjacent property, he or she may move the vehicle or require the driver or person in charge of the vehicle to move it to the nearest available location in the vicinity where parking is permitted.

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(c) Any state, county, or city authority charged with the maintenance of any highway may move any vehicle which is disabled or abandoned or which constitutes an obstruction to traffic from the place where it is located on a highway to the nearest available position on the same highway as may be necessary to keep the highway open or safe for public travel. In addition, employees of the Department of Transportation may remove any disabled vehicle which constitutes an obstruction to traffic on a freeway from the place where it is located to the nearest available location where parking is permitted; and if the vehicle is unoccupied, the department shall comply with the notice requirements of subdivision (d) of this section.

(d) Any state, county, or city authority charged with the maintenance or operation of any highway, highway facility, or public works facility, in cases necessitating the prompt performance of any work on or service to such highway, highway facility, or public works facility, may move to the nearest available location where parking is permitted, any unattended vehicle which obstructs or interferes with the performance of such work or service or may remove and store such a vehicle if moving it off the roadway to a location where parking is permitted would be impracticable. If the vehicle is moved to another location where it is not readily visible from its former parked location or it is stored, the person causing such movement or storage of the vehicle shall immediately, by the most expeditious means, notify the owner of the vehicle of its location. If for any reason the vehicle owner cannot be so notified, the person causing the vehicle to be moved or stored shall immediately, by the most expeditious means, notify the police department of the city in which the vehicle was parked, or, if the vehicle had been parked in an unincorporated area of a county, notify the sheriff's department and nearest office of the California Highway Patrol in that county. No vehicle may be removed and stored pursuant to this subdivision unless signs indicating that no person shall stop, park, or leave standing any vehicle within the areas marked by the signs because such work or service would be done, were placed at least 24 hours prior to such movement or removal and storage.

SEC. 34. Section 22655 of the Vehicle Code is amended to read:

22655. (a) When any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, has reasonable cause to believe that a motor vehicle on a highway or on private property open to the general public onto which the public is explicitly or implicitly invited, located within the territorial limits in which the officer is empowered to act, has been involved in a hit-and-run accident, and the operator of the vehicle has failed to stop and comply with the provisions of Sections 20002 to 20006, inclusive, the officer may remove the vehicle from the highway or from public or private property for the purpose of inspection.

(b) Unless sooner released, the vehicle shall be released upon the

expiration of 48 hours after such removal from the highway or private property upon demand of the owner. When determining the 48-hour period, weekends, and holidays shall not be included.

(c) Notwithstanding subdivision (b), when a motor vehicle to be inspected pursuant to subdivision (a) is a commercial vehicle, any cargo within the vehicle may be removed or transferred to another vehicle.

This section shall not be construed to authorize the removal of any vehicle from an enclosed structure on private property which is not open to the general public.

SEC. 35. Section 22656 of the Vehicle Code is amended to read:

22656. Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove a vehicle from a railroad right-of-way located within the territorial limits in which the officer is empowered to act if the vehicle is parked upon any railroad track or within 7½ feet of the nearest rail.

SEC. 36. Section 22657.5 of the Vehicle Code is repealed.

SEC. 37. Section 22659 of the Vehicle Code is repealed.

SEC. 38. Section 22702 of the Vehicle Code is amended to read:

22702. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of the state, county, or city designated by an agency or department of the state or the board of supervisors or city council to perform this function, in the territorial limits in which the officer or employee is authorized to act, who has reasonable grounds to believe that the vehicle has been abandoned, may remove the vehicle from a highway or from public or private property.

(b) Any person performing a franchise or contract awarded pursuant to subdivision (a) of Section 22710, may remove a vehicle from a highway or place to which it has been removed pursuant to subdivision (c) of Section 22654 or from public or private property, after a determination by a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or other designated employee of the state, county, or city in which such vehicle is located that such vehicle is abandoned.

(c) The public agency employing the officer shall make an appraisal of any such vehicle either prior to or within five days after removal.

(d) A state, county, or city employee, other than a peace officer or employee of a sheriff's department or city police department, designated to remove vehicles pursuant to this section may do so only after he has mailed or personally delivered a written report identifying the vehicle and its location to the office of the Department of the California Highway Patrol located nearest to the vehicle.

SEC. 38.2. Section 22702 of the Vehicle Code is amended and renumbered to read:

22669. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of the state, county, or city designated by an agency or department of the state or the board of supervisors or city council to perform this function, in the territorial limits in which the officer or employee is authorized to act who has reasonable grounds to believe that the vehicle has been abandoned, as determined pursuant to Section 22523, may remove the vehicle from a highway or from public or private property.

(b) Any person performing a franchise or contract awarded pursuant to subdivision (a) of Section 22710, may remove a vehicle from a highway or place to which it has been removed pursuant to subdivision (c) of Section 22654 or from public or private property, after a determination by a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or other designated employee of the state, county, or city in which such vehicle is located that such vehicle is abandoned, as determined pursuant to Section 22523.

(c) A state, county, or city employee, other than a peace officer or employee of a sheriff's department or a city police department, designated to remove vehicles pursuant to this section may do so only after he or she has mailed or personally delivered a written report identifying the vehicle and its location to the office of the Department of the California Highway Patrol located nearest to the vehicle.

SEC. 38.5. Section 5008 of the Welfare and Institutions Code is amended to read:

5008. Unless the context otherwise requires, the following definitions shall govern the construction of this part:

(a) "Evaluation" consists of multidisciplinary professional analyses of a person's medical, psychological, educational, social, financial, and legal conditions as may appear to constitute a problem. Persons providing evaluation services shall be properly qualified professionals and may be full-time employees of an agency providing evaluation services or may be part-time employees or may be employed on a contractual basis;

(b) "Court-ordered evaluation" means an evaluation ordered by a superior court pursuant to Article 2 (commencing with Section 5200) or by a court pursuant to Article 3 (commencing with Section 5225) of Chapter 2 of this part;

(c) "Intensive treatment" consists of such hospital and other services as may be indicated. Intensive treatment shall be provided by properly qualified professionals and carried out in facilities qualifying for reimbursement under the California Medical Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of this code, or under Title XVIII of the federal Social Security Act and regulations thereunder. Intensive treatment may be provided in hospitals of the United States government by properly qualified professionals. Nothing in

this part shall be construed to prohibit an intensive treatment facility from also providing 72-hour treatment and evaluation;

(d) "Referral" is referral of persons by each agency or facility providing intensive treatment or evaluation services to other agencies or individuals. The purpose of referral shall be to provide for continuity of care, and may include, but need not be limited to, informing the person of available services, making appointments on the person's behalf, discussing the person's problem with the agency or individual to which the person has been referred, appraising the outcome of referrals, and arranging for personal escort and transportation when necessary. Referral shall be considered complete when the agency or individual to whom the person has been referred accepts responsibility for providing the necessary services. All persons shall be advised of available precare services which prevent initial recourse to hospital treatment or aftercare services which support adjustment to community living following hospital treatment. Such services may be provided through county welfare departments, State Department of Mental Health, Short-Doyle programs or other local agencies.

Each agency or facility providing evaluation services shall maintain a current and comprehensive file of all community services, both public and private. Such files shall contain current agreements with agencies or individuals accepting referrals, as well as appraisals of the results of past referrals;

(e) "Crisis intervention" consists of an interview or series of interviews within a brief period of time, conducted by qualified professionals, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the person or the family. The interview or interviews may be conducted in the home of the person or family, or on an inpatient or outpatient basis with such therapy, or other services, as may be appropriate. Crisis intervention may, as appropriate, include suicide prevention, psychiatric, welfare, psychological, legal, or other social services;

(f) "Prepetition screening" is a screening of all petitions for court-ordered evaluation as provided in Article 2 (commencing with Section 5200) of Chapter 2, consisting of a professional review of all petitions; an interview with the petitioner and, whenever possible, the person alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled, to assess the problem and explain the petition; when indicated, efforts to persuade the person to receive, on a voluntary basis, comprehensive evaluation, crisis intervention, referral, and other services specified in this part;

(g) "Conservatorship investigation" means investigation by an agency appointed or designated by the governing body of cases in which conservatorship is recommended pursuant to Chapter 3 (commencing with Section 5350) of this part;

(h) For purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), and Article 4

(commencing with Section 5250) of Chapter 2 of this part, and for the purposes of Chapter 3 (commencing with Section 5350) of this part, "gravely disabled" means:

(1) A condition in which a person, as a result of a mental disorder, is unable to provide for his basic personal needs for food, clothing, or shelter; or

(2) A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist:

(i) The indictment or information pending against the defendant at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person.

(ii) The indictment or information has not been dismissed.

(iii) As a result of mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him and to assist counsel in the conduct of his defense in a rational manner.

For purposes of Article 3 (commencing with Section 5225) and Article 4 (commencing with Section 5250), of Chapter 2 of this part, and for the purposes of Chapter 3 (commencing with Section 5350) of this part, "gravely disabled" means a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for his basic personal needs for food, clothing, or shelter.

The term "gravely disabled" does not include mentally retarded persons by reason of being mentally retarded alone;

(i) "Peace officer" means a duly sworn peace officer as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has completed the basic training course established by the Commission on Peace Officer Standards and Training, or any parole officer or probation officer specified in Section 830.5 of the Penal Code when acting in relation to cases for which he or she has a legally mandated responsibility;

(j) "Postcertification treatment" means an additional period of treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of this part;

(k) "Court," unless otherwise specified, means a court of record or a justice court;

(*l*) A gravely disabled minor is a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others.

SEC. 38.6. It is the intent of the Legislature, if this bill and Assembly Bill 1893 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 830.4 of the Penal Code, and this bill is chaptered after Assembly Bill 1893, that Section 830.4 of the Penal Code, as amended by Section 12 of this act, shall remain operative until the effective date of Assembly Bill 1893, and that on the effective date of Assembly Bill 1893, Section 830.4 of the

Penal Code, as amended by Section 12 of this act, be further amended in the form set forth in Section 12.5 of this act to incorporate the changes in Section 830.4 proposed by Assembly Bill 1893. Therefore, if this bill and Assembly Bill 1893 are both chaptered and become effective on or before January 1, 1981, and Assembly Bill 1893 is chaptered before this bill and amends Section 830.4, Section 12.5 of this act shall become operative on the effective date of Assembly Bill 1893.

SEC. 38.7. It is the intent of the Legislature, if this bill and Assembly Bill 3217 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 830.6 of the Penal Code, and this bill is chaptered after Assembly Bill 3217, that Section 830.6 of the Penal Code, as amended by Section 15 of this act, shall remain operative until the effective date of Assembly Bill 3217, and that on the effective date of Assembly Bill 3217, Section 830.6 of the Penal Code, as amended by Section 15 of this act, be further amended in the form set forth in Section 15.5 of this act to incorporate the changes in Section 830.6 proposed by Assembly Bill 3217. Therefore, if this bill and Assembly Bill 3217 are both chaptered and become effective on or before January 1, 1981, and Assembly Bill 3217 is chaptered before this bill and amends Section 830.6, Section 15.5 of this act shall become operative on the effective date of Assembly Bill 3217.

SEC. 38.8. It is the intent of the Legislature, if this bill and Senate Bill 1676 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 1808.4 of the Vehicle Code, and this bill is chaptered after Senate Bill 1676, that Section 1808.4 of the Vehicle Code, as amended by Section 29 of this act, shall remain operative until the effective date of Senate Bill 1676, and that on the effective date of Senate Bill 1676, Section 1808.4 of the Vehicle Code, as amended by Section 29 of this act, be further amended in the form set forth in Section 29.5 of this act to incorporate the changes in Section 1808.4 proposed by Senate Bill 1676. Therefore, if this bill and Senate Bill 1676 are both chaptered and become effective on or before January 1, 1981, and Senate Bill 1676 is chaptered before this bill and amends Section 1808.4, Section 29.5 of this act shall become operative on the effective date of Senate Bill 1676.

SEC. 38.9. It is the intent of the Legislature, if this bill and Senate Bill 1896 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 22702 of the Vehicle Code, and this bill is chaptered after Senate Bill 1896, that Section 22702 of the Vehicle Code, as amended by Section 38 of this act, shall remain operative until the effective date of Senate Bill 1896, and that on the effective date of Senate Bill 1896, Section 22702 of the Vehicle Code, as amended by Section 38 of this act, be further amended in the form set forth in Section 38.2 of this act to incorporate the changes in Section 22702 proposed by Senate Bill 1896. Therefore, if this bill and Senate Bill 1896 are both chaptered and become effective on or before January 1, 1981, and Senate Bill 1896 is chaptered before this

bill and amends Section 22702, Section 38.2 of this act shall become operative on the effective date of Senate Bill 1896.

SEC. 39. It is the intent of the Legislature that the changes effected by this act shall serve only to define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers, and duties; and that there shall be no change in the status of individuals for purposes of retirement, workers' compensation or similar injury or death benefits, or other employee benefits.

SEC. 40. The sum of three million five hundred thousand dollars ($3,500,000) is hereby appropriated from the Peace Officer's Training Fund to the Commission on Peace Officer Standards and Training in augmentation of Item 456 of the Budget Act of 1980 (Ch. 510, Stats. 1980) for allocation to cities, counties, cities and counties, or districts, for the purpose of reimbursing such jurisdictions for peace officer training.

SEC. 41. This act is an urgency statute necessary for the immediate peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Federal law requires that sworn peace officers be available at boarding stations in federally regulated airports throughout the State of California. In order to comply with this federal mandate, peace officer classifications must be created which will permit local governments to employ properly authorized personnel. In addition, state law mandates the responsibility of enforcing certain laws to state employees who are not currently authorized as peace officers to investigate such offenses. This bill would so authorize them.

CHAPTER 1341

An act to amend Sections 4555, 4700 and 4701 of, to add Section 196 to, and to repeal Section 196 of, the Civil Code, relating to family law.

[Approved by Governor September 30, 1980. Filed with Secretary of State September 30, 1980.]

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

SECTION 1. Section 196 of the Civil Code is repealed.

SEC. 2. Section 196 is added to the Civil Code, to read:

196. The father and mother of a child have an equal responsibility to support and educate their child in the manner suitable to the child's circumstances, taking into consideration the respective earnings or earning capacities of the parents.

SEC. 3. Section 4555 of the Civil Code is amended to read:

4555. (a) A final judgment made pursuant to Section 4553 shall not prejudice nor bar the rights of either of the parties to institute

Assembly Bill No. 488

CHAPTER 803

An act to amend Sections 4497.34 and 13012 of, and to add Section 13010.5 to, the Penal Code, relating to crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 488, Baca. Juvenile justice system.

(1) Existing law specifies procedures under which counties are eligible to receive funding to construct, reconstruct, remodel, or replace juvenile facilities from moneys in the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988. These procedures require the county to enter into a contract with the Department of the Youth Authority and begin construction or renovation work within 4 years of the operative date of the regulations that implement the provisions.

This bill would extend the period in which a county may begin construction or renovation work on juvenile facilities and still be eligible to receive funding under these provisions to within 6 years of the operative date of the regulations that implement the provisions. This bill also would require the Department of the Youth Authority to immediately reallocate unused awards to eligible participating counties, excluding moneys allocated to San Bernardino County.

(2) Existing law requires the Department of Justice to collect data necessary for the work of the department, to process, tabulate, analyze, and interpret the data, to present an annual report to the Governor containing the criminal statistics of the preceding calendar year, and to periodically review the requirements of units of government using criminal justice statistics. The department's annual report is required to contain statistics showing the administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions in dealing with criminals or delinquents.

This bill would expressly require this report to contain statistics showing administrative actions taken by those agencies or institutions in the juvenile justice system. The bill would require the department to collect data pertaining to the juvenile justice system for statistical purposes. The bill would require that this information serve to assist the department in complying with the reporting

requirement described above, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

The bill would appropriate $149,000 from the General Fund to the Department of Justice for the purpose of implementing this program for the 1995–96 fiscal year, and would direct the department thereafter to implement this program using funds appropriated therefor in the Budget Act.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 4497.34 of the Penal Code is amended to read:

4497.34. (a) Counties with overcrowded juvenile facilities shall not be eligible to receive funds to construct, reconstruct, remodel, or replace juvenile facilities unless they have adopted a plan to correct overcrowded conditions within their facilities which includes the use of alternatives to detention. The corrective action plan shall provide for the use of five or more methods or procedures to minimize the number of minors detained and shall be approved by the board of supervisors during or subsequent to a public hearing.

(b) To be eligible for funding under this chapter, the county shall enter into a contract with the Department of the Youth Authority and begin construction or renovation work within six years of the operative date of the regulations that implement this chapter. If a county fails to meet this requirement, any allocations or awards to that county under this chapter shall be deemed void and any moneys allocated or awarded to that county shall revert to the Department of the Youth Authority for reallocation to another county as provided by Section 4497.32. The department may waive this requirement if it determines that there are unavoidable delays in starting construction.

(c) To be eligible for funding for juvenile facilities under the County Correctional Facility Capital Expenditure Bond Act of 1986, the county shall enter into a contract with the Department of the Youth Authority and begin construction or renovation work by July 31, 1991. If a county fails to meet this requirement, all allocations or awards that have been made to that county under that act shall be deemed void and any moneys allocated or awarded to that county shall revert to the Department of the Youth Authority and are reappropriated for reallocation as provided by Section 4497.32. The department may waive this requirement if it determines that there are unavoidable delays in starting construction.

(d) Excluding moneys allocated for San Bernardino County, the Department of the Youth Authority shall immediately reallocate unused awards to eligible participating counties.

SEC. 2. Section 13010.5 is added to the Penal Code, to read:

13010.5. The department shall collect data pertaining to the juvenile justice system for statistical purposes. This information shall serve to assist the department in complying with the reporting requirement of subdivision (c) of Section 13012, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

SEC. 3. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(a) The amount and the types of offenses known to the public authorities.

(b) The personal and social characteristics of criminals and delinquents.

(c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

(d) The number of citizens' complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable counties with demonstrated need for relief of overcrowded juvenile facilities to utilize funds that they were entitled to for that purpose, but for inadvertent failure to meet a deadline for entering into a contract and beginning construction, and to enable the Department of Justice to implement the data collection program as expeditiously as possible, it is necessary that this act go into immediate effect.

SEC. 5. (a) The sum of one hundred forty-nine thousand dollars ($149,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of implementing Sections 2 and 3 of this act for the 1995–96 fiscal year.

(b) Thereafter, the Department of Justice shall implement Sections 2 and 3 of this act using funds appropriated in the Budget Act for these purposes.

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Senate Bill No. 314

CHAPTER 468

An act to amend Sections 13010.5 and 13012 of, and to add Section 13012.5 to, the Penal Code, relating to criminal statistics, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

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

I am signing Senate Bill 314, however, I am vetoing Section 4 of the bill which would appropriate $75,000 from the Controller for disbursement to the Department of Justice in order to implement the provisions of this bill.

I believe that the inclusion of statistical data related to minors who are subject to the jurisdiction of an adult criminal court in the Department of Justice's annual report would be beneficial in order to assess the public safety impact and fiscal consequences of trying minors as adults. However, due to the economic situation facing the State, the Department of Justice should fund the implementation of this bill through the $350,000 of federal funding that is available from the Office of Criminal Justice Planning and through existing resources of the Department.

GRAY DAVIS, Governor

LEGISLATIVE COUNSEL'S DIGEST

SB 314, Alpert. Criminal statistics.

Existing law requires the Department of Justice to present a report to the Governor annually containing the criminal statistics of the preceding year, as specified. Existing law also requires the Department of Justice to collect data pertaining to the juvenile justice system.

This bill would require the report to contain statistics on the administrative actions taken by various branches of law enforcement and the criminal justice system in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court, as specified, beginning with the report due on July 1, 2003. This bill would also require that the data collected serve to assist the department in making this report.

This bill would appropriate the sum of $75,000 from the General Fund to the Controller for disbursement to the Department of Justice for the purpose of these provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 13010.5 of the Penal Code is amended to read:

13010.5. The department shall collect data pertaining to the juvenile justice system for statistical purposes. This information shall serve to assist the department in complying with the reporting requirement of subdivisions (c) and (d) of Section 13012, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

SEC. 2. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(a) The amount and the types of offenses known to the public authorities.

(b) The personal and social characteristics of criminals and delinquents.

(c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

(d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

(e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 3. Section 13012.5 is added to the Penal Code, to read:

13012.5. (a) The annual report published by the department under Section 13010 shall, in regard to the contents required by subdivision (d) of Section 13012, include the following statewide information:

(1) The annual number of fitness hearings held in the juvenile courts under Section 707 of the Welfare and Institutions Code, and the outcomes of those hearings including orders to remand to adult criminal court, cross-referenced with information about the age, gender, ethnicity, and offense of the minors whose cases are the subject of those fitness hearings.

(2) The annual number of minors whose cases are filed directly in adult criminal court under Sections 602.5 and 707 of the Welfare and Institutions Code, cross-referenced with information about the age, gender, ethnicity, and offense of the minors whose cases are filed directly to the adult criminal court.

(3) The outcomes of cases involving minors who are prosecuted in adult criminal courts, regardless of how adult court jurisdiction was initiated, including whether the minor was acquitted or convicted, or whether the case was dismissed and returned to juvenile court, including sentencing outcomes, cross-referenced with the age, gender, ethnicity, and offense of the minors subject to these court actions.

(b) The department's annual report published under Section 13010 shall include the information described in subdivision (d) of Section 13012, as further delineated by this section, beginning with the report due on July 1, 2003, for the preceding calendar year.

SEC. 4. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the General Fund to the Controller for disbursement to the Department of Justice for the purpose of this act.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the department to collect the information required under these provisions by the reporting deadline, it is necessary for this act to take effect immediately as an urgency statute.

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sion in its proceedings should take into account potential stranded costs for core and noncore customers.

(3) Consider a regulatory scheme that allows both unbundled public utility gas storage service and independent gas storage companies the ability to charge market-based rates.

(4) Give expedited consideration to applications for a certificate of public convenience and necessity filed by independent gas storage companies so as to enable these companies to commence operations at a time reasonably proximate to the initiation of unbundled public utility gas storage service. Further, the commission should take appropriate consideration of the costs and benefits of a competitive gas storage market in making determinations of the public convenience and necessity in these cases.

(5) Ensure that costs borne by core customers as a result of these storage proceedings are commensurate with the benefits that core customers receive.

(e) The Public Utilities Commission is requested to report to both houses of the Legislature no later than July 1, 1993, explaining what steps the commission has taken to foster the development of a competitive natural gas storage market, including, but not limited to, a description of all commission orders, decision, rules, or regulations affecting the unbundling of public utility gas storage services, the rates charged for these services, and the amount of such services utilized by customers. In addition, the commission is requested in the report to describe the actions it has taken in connection with the development of independent gas storage companies, including, but not limited to, the issuance of certificates of public convenience and necessity, the approval of transportation tariffs, and orders providing for the interconnection of these independent gas storage facilities with the facilities of existing public utilities.

SEC. 2. Notwithstanding any other provision of law, the Director of Finance may authorize transfers from reserve funds in the Transportation Rate Fund (Section 5005, Public Utilities Code), Public Utilities Commission Utilities Reimbursement Account (Section 402, Public Utilities Code), or the Public Utilities Commission Transportation Reimbursement Account (Section 408, Public Utilities Code) for support of the Public Utilities Commission. The total of all transfers pursuant to this section shall not exceed five million dollars ($5,000,000).

CRIMES—SEXUAL HABITUAL OFFENDERS—DEPARTMENT OF JUSTICE

CHAPTER 1338

S.B. No. 1184

AN ACT to amend Sections 290.3 and 11170 of, to add Section 13014 to, and to add Chapter 9.5 (commencing with Section 13885) to Title 6 of Part 4 of, the Penal Code, relating to sexual habitual offenders.

[Approved by Governor September 30, 1992.]

[Filed with Secretary of State September 30, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1184, Presley. Sexual habitual offenders.

(1) Existing law defines murder as the unlawful killing of a human being or a fetus with malice aforethought. Existing law also provides for 1st degree and 2nd degree murder.

This bill would direct the Department of Justice to do all of the following within its existing budget:

(a) Collect specified information on all persons who are the victims of, and all persons who are charged with, the crime of murder.

(b) Adopt and distribute to all state and governmental entities that are responsible for the investigation and prosecution of murder cases forms which will include information provided to the department pursuant to (2) below.

(c) Compile, collate, index, and maintain a file of the information required by (2) below, which would be made available to the general public during the normal business hours of the department.

(2) In addition, the bill would require every state or local governmental entity responsible for the investigation and prosecution of a homicide case to provide the department, on forms specified above, with specified demographic information about the victim and the person or persons charged with the crime. Because these provisions would increase the responsibilities of local governmental entities, the bill would impose a state-mandated local program.

(3) Existing law requires persons convicted of specified sex offenses who are required to register, in addition to any imprisonment or fine, or both, to pay an additional fine, as specified, unless the court determines that the defendant does not have the ability to pay the fine. Existing law also requires that an amount equal to the moneys deposited with the county treasurer under this provision be transferred to the Controller for deposit in the General Fund, to be used, upon appropriation by the Legislature, for the purposes of provisions relating to the Serious Habitual Offender Program pilot project authorized in specified counties mentioned in (6) below.

This bill would require, instead, that the moneys be used for the purposes of a statewide Sexual Habitual Offender Program proposed by this bill.

(4) Existing law, the Child Abuse and Neglect Reporting Act, requires the Department of Justice to maintain an index of all reports of child abuse submitted, as specified, to be updated continually. Existing law also requires the department to make information from the index concerning, among others, applicants for licensure or any adult who resides or is employed in a home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children available to the State Department of Social Services or to any county licensing agency which has contracted with the state, as specified.

This bill would provide, commencing January 1, 1993, that whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to this provision, the Department of Justice may charge the person or entity making the request a fee not to exceed the reasonable costs to the department of providing the information, not to be increased, except as specified, and in no case to exceed $15.

(5) Existing law requires specified sex offenders who are required to register, prior to discharge or parole from the state prison, a county jail, or specified institutions, or prior to the granting of probation or release, to submit specimens of blood and saliva samples. Existing law also requires the Department of Justice to perform DNA and other genetic typing analysis of these blood specimens and saliva samples for law enforcement purposes.

This bill would provide that the above-mentioned fee that this bill would authorize the Department of Justice to charge a person making a request for information would fund the DNA offender identification file authorized by this provision.

(6) Existing law authorizes the Serious Habitual Offender Program pilot project for 5 years in the Counties of San Francisco, San Mateo, Santa Clara, Santa Cruz, Alameda, Contra Costa, Napa, Sonoma, Solano, and Marin for the purpose of evaluating the number of arrests and convictions for sex offenses and the length of sentences for repeat offenders. The project becomes inoperative on July 1, 1994, and related provisions are to be repealed on January 1, 1995.

This bill would authorize a similar statewide Sexual Habitual Offender Program. To the extent that local counties will be required to furnish copies of existing information maintained in their files regarding persons identified by the Department of Justice as serious habitual sex offenders and provide followup information, this bill would impose a state-mandated local program.

(7) This bill would incorporate additional changes in Section 11170 of the Penal Code, proposed by AB 92, to be operative only if AB 92 and this bill are both chaptered and become effective January 1, 1993, and this bill is chaptered last.

(8) 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 which 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 this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

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

SECTION 1. Section 290.3 of the Penal Code is amended to read:

290.3. Every person convicted of a violation of any offense listed in subdivision (a) of Section 290 * * *, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, shall be punished by a fine of one hundred dollars ($100) upon the first conviction or a fine of two hundred dollars ($200) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

Out of the moneys deposited with the county treasurer pursuant to this section, there shall be transferred, once a month, to the Controller for deposit in the General Fund, an amount equal to all fines collected during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense listed in Section 290. Moneys deposited in the General Fund pursuant to this section shall be deposited in the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature * * *, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

SEC. 2. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency * * *, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or

children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information that has been received subsequent to January 1, 1981, concerning such a person, it also shall make available to the State Department of Social Services or to the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(5) Effective January 1, 1998, whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and Section 290.2, and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5. (commencing with Section 13885) of Title 6 of Part 4 and Section 290.2.

SEC. 2.5. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded or that have been destroyed under Section 11169. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318, of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency * * *, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section

* * * 8714, 8802, 8912, or 9000 of the Family Code. If the department has information that has been received subsequent to January 1, 1981, concerning such a person, it also shall make available to the State Department of Social Services or to the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(5) Effective January 1, 1993, whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All the moneys received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and Section 290.2, and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Part 6 of Part 4 and Section 290.2.

(c) Whenever a report of suspected child abuse names a school employee and forms the basis for disciplinary action of the employee by the school employer, the school or school district, subject to Section 44031 of the Education Code or any applicable agreement adopted pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, may maintain customary records regarding the alleged incident. However, under no circumstances shall the report of suspected child abuse itself be retained in a school employee's personnel file.

SEC. 3. Section 13014 is added to the Penal Code, to read:

13014. (a) The Department of Justice shall perform the following duties concerning the investigation and prosecution of homicide cases:

(1) Collect information, as specified in subdivision (b), on all persons who are the victims of, and all persons who are charged with, homicide.

(2) Adopt and distribute to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms which will include information to be provided to the department pursuant to subdivision (b).

(3) Compile, collate, index, and maintain a file of the information required by subdivision (b). The file shall be available to the general public during the normal business hours of the department, and the department shall annually publish a report containing the information required by this section, which shall also be available to the general public.

The department shall perform the duties specified in this subdivision within its existing budget.

(b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background.

SEC. 4. Chapter 9.5 (commencing with Section 13885) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 9.5. STATEWIDE SEXUAL HABITUAL OFFENDER PROGRAM

13885. The Legislature hereby finds that a substantial and disproportionate amount of sexual offenses are committed against the people of California by a relatively small number of multiple and repeat sex offenders. In enacting this chapter, the Legislature intends to support efforts of the criminal justice community through a focused effort by law enforcement and prosecuting agencies to identify, locate, apprehend, and prosecute sexual habitual offenders.

13885.2. The Attorney General, subject to the availability of funds, shall establish in the Department of Justice the Sexual Habitual Offender Program, which is hereby created, which shall evaluate the number of arrests and convictions for sex offenses and the length of sentences for repeat offenders. This shall be a statewide program.

It is the intent of the Legislature that this statewide program shall not affect the operation of the Serious Habitual Offender Program authorized by Chapter 10 (commencing with Section 13890) involving the Counties of San Francisco, San Mateo, Santa Clara, Santa Cruz, Alameda, Contra Costa, Napa, Sonoma, Solano, and Marin which shall become inoperative on July 1, 1994.

13885.4. As used in this chapter, "sexual habitual offenders" means those persons who have been either of the following:

(a) Convicted of two or more violent offenses against a person involving force or violence which include at least one sex offense.

(b) Convicted of an offense listed in Section 290 and also meet one of the following criteria:

(1) Have three or more felony arrests for sex offenses specified in Section 290 on their criminal record.

(2) Have five or more felony arrests for any type of offense on their criminal record.

(3) Have 10 or more arrests, either felony or misdemeanor, for any type of offense on their criminal record.

(4) Have five or more arrests, either felony or misdemeanor, for any type of offense, including either of the following:

(A) At least one conviction for multiple sex offenses which shall mean a conviction arising from the commission of two or more offenses listed in subdivision (a) of Section 290 in one transaction.

(B) At least two arrests for a single sex offense listed in subdivision (a) of Section 290.

13885.6. The Department of Justice shall establish and maintain a comprehensive file of existing information maintained by law enforcement agencies, the Department of Corrections, the Department of Motor Vehicles, and the Department of Justice. The Department of Justice may request the Department of Corrections, the Department of Motor Vehicles, and law enforcement agencies to provide existing information from their files regarding persons identified as sexual habitual offenders. The Department of Corrections, the Department of Motor Vehicles, and law enforcement agencies, when requested by the Department of Justice, shall provide copies of existing information maintained in their files regarding persons identified by the Department of Justice as sexual habitual offenders and shall provide followup information to the Department of Justice as it becomes available. This sexual habitual offender file shall be maintained by the Department of Justice and shall contain a complete physical description and method of operation of the sexual habitual offender, information describing his or her interaction with criminal justice agencies, and his or her prior criminal record. The Department of Justice also shall prepare a summary profile of each sexual habitual offender for distribution to law enforcement agencies.

13885.8. The Department of Justice shall provide a summary profile of each sexual habitual offender to each law enforcement agency when the individual registers in, or moves to, the area in which the law enforcement agency is located.

CHAPTER 1609

An act to add Section 13519 to, and to add and repeal Title 5 (commencing with Section 13700) to Part 4 of, the Penal Code, relating to training of peace officers, and making an appropriation therefor.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

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

SECTION 1. The Legislature finds and declares that:

(a) A significant number of homicides, aggravated assaults, and assaults and batteries occur within the home between adult members of families. Research shows that 35 to 40 percent of all assaults are related to domestic violence.

(b) The reported incidence of domestic violence represents only a portion of the total number of incidents of domestic violence.

(c) Twenty-three percent of the deaths of law enforcement officers in the line of duty results from intervention by law enforcement officers in incidents of domestic violence.

(d) Domestic violence is a complex problem affecting families from all social and economic backgrounds.

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is not the intent of the Legislature to remove a peace officer's individual discretion where that discretion is necessary, nor is it the intent of the Legislature to hold individual peace officers liable.

SEC. 2. Section 13519 is added to the Penal Code, to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any

shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; ~~two~~ representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Forty thousand dollars ($40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.

SEC. 3. Title 5 (commencing with Section 13700) is added to Part 4 of the Penal Code, to read:

TITLE 5. LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

CHAPTER 1. GENERAL PROVISIONS

13700. As used in this title:

(a) "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 himself, or another.

(b) "Domestic Violence" is abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or has or has had a dating or engagement relationship.

(c) "Officer" means any law enforcement officer employed by a local police department or sheriff's office, consistent with Section 830.1.

(d) "Victim" means a person who is a victim of domestic violence.

13701. Every law enforcement agency in the this state shall develop, adopt, and implement written policies and standards for officers' response to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred. These

compiled by each law enforcement agency and submitted to the Attorney General.

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

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

CHAPTER 5. TERMINATION

13731. This title shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 4. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the General Fund to the Department of Justice for the purposes of Section 13730 of the Penal Code.

SEC. 5. 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.

CHAPTER 1610

An act to add Section 14132.6 to the Welfare and Institutions Code, relating to mastectomy.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

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

SECTION 1. The Legislature finds and declares that breast reconstruction incident to mastectomy is not cosmetic surgery. It is surgical restoration of a part of the body that has been lost through severe illness by no fault of the patient, and restoration shall, therefore, be considered part of the original mastectomy surgery.

SEC. 2. Section 14132.6 is added to the Welfare and Institutions Code, to read:

14132.6. External prostheses constructed of silicon or other

BILL NUMBER: AB 2250 CHAPTERED 10/11/93

BILL TEXT

CHAPTER 1230
FILED WITH SECRETARY OF STATE OCTOBER 11, 1993
APPROVED BY GOVERNOR OCTOBER 11, 1993
PASSED THE SENATE SEPTEMBER 10, 1993
PASSED THE ASSEMBLY SEPTEMBER 10, 1993
AMENDED IN SENATE SEPTEMBER 8, 1993
AMENDED IN SENATE AUGUST 17, 1993
AMENDED IN SENATE JULY 16, 1993
AMENDED IN ASSEMBLY MAY 11, 1993

INTRODUCED BY Assembly Members Speier and Collins

MARCH 5, 1993

An act to amend Sections 13700 and 13730 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2250, Speier. Domestic violence.

Existing law requires every law enforcement agency to develop, adopt, and implement written policies and standards for officers' response to domestic violence calls, as specified, maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, as specified, and develop a system for recording all domestic violence-related calls for assistance made to the Department of Justice. Existing law also requires each law enforcement agency to develop an incident report form that includes a domestic violence identification code, as specified.

This bill would require that domestic violence-related calls for assistance, for the purposes of these provisions, be supported with the written incident report form developed under the above provisions, identifying the domestic violence incident.

Existing law defines "domestic violence" for this purpose as abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

This bill would redefine "domestic violence" for this

purpose, as abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, specified cohabitant, or former cohabitant in the case of adults, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, thereby imposing a state-mandated local program by expanding the scope of the duties of local law enforcement with regard to recording and providing written incident reports on domestic violence-related calls.

This bill would incorporate additional changes in Section 13700 of the Penal Code proposed by AB 224, to be operative only if AB 224 and this bill are both chaptered and become effective January 1, 1994, and this bill is chaptered last.

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 which 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 this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) "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 himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are

cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, or any peace officer of the California State University Police Department, as defined in subdivision (d) of Section 830.2.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 1.5. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) "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 himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the California Highway Patrol, the California State Police, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, or a housing authority patrol officer, as defined in subdivision (d) of Section 830.31.

(d) "Victim" means a person who is a victim of domestic

violence.

SEC. 2. 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 violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 13700 of the Penal Code proposed by both this bill and AB 224. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 13700 of the Penal Code, and (3) this bill is enacted after AB 224, in which case Section 1 of this bill shall not become operative.

SEC. 4. 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Senate Bill No. 132

CHAPTER 965

An act to amend Sections 13519 and 13730 of the Penal Code, relating to domestic violence.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 132, Watson. Domestic violence.

(1) Under existing law, the Commission on Peace Officer Standards and Training is required to implement a course or courses of instruction for the training of law enforcement officers in the handling of domestic violence complaints. The course of instruction is required to be developed by the commission in consultation with specified groups and individuals.

This bill would require each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence to complete, every 2 years, an updated course of instruction on domestic violence. This instruction would be funded from existing resources.

Existing law requires each law enforcement agency to develop an incident report form that includes a domestic violence identification code and requires a report to be written in all incidents of domestic violence.

This bill would specify certain information to be included in a domestic violence incident report.

(2) 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 impose a state-mandated local program by imposing new duties on peace officers.

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 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (d) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

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

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, reportwriting, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

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

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least

one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 2. 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 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 had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

Assembly Bill No. 469

CHAPTER 483

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 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.

The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1172

An act to add Section 13023 to the Penal Code, relating to criminal records.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 13023 is added to the Penal Code, to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, such information as may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1173

An act to add Section 56111.1 to the Government Code, and to amend Section 99231 of the Public Utilities Code, relating to local government.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 56111.1 is added to the Government Code, to read:

56111.1. (a) Notwithstanding Section 56110, upon approval of the commission, the City of Soledad may annex noncontiguous territory of not more than 1,000 acres in area, located in the County of Monterey and which constitutes a state correctional training facility. If, after the completion of the annexation, the State of California sells that territory or any part thereof, all of that territory which is no longer owned by the state shall cease to be a part of the City of Soledad.

(b) If territory is annexed pursuant to this section, the city may not annex any territory not owned by the State of California and not contiguous to the city although that territory is contiguous to the territory annexed pursuant to this section.

(c) When territory ceases to be part of the city pursuant to this section, the legislative body of the city shall adopt a resolution confirming the detachment of that territory from the city. The resolution shall describe the detached territory and shall be accompanied by a map indicating the territory. Immediately upon adoption of the resolution, the city clerk shall make any filing provided for by Chapter 8 (commencing with Section 57200) of Part 4 of Division 3.

(d) If territory annexed to the City of Soledad pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) The City of Soledad may enter into an agreement with any

Assembly Bill No. 1999

CHAPTER 933

An act to amend Sections 186.21, 422.75, 11410, 13023, and 13519.6 of, and to add Section 422.76 to, the Penal Code, relating to gender.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1999, Kuehl. Hate crimes: gender.

(1) Existing law punishes as a misdemeanor, a person who uses force or threat of force to willfully injure, intimidate, interfere with, oppress, or threaten any person in the free exercise or enjoyment of a right or privilege because of that person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. Similarly, existing law imposes an enhanced penalty on a person who, while acting in concert with another person, commits or attempts to commit a felony because of the victim's membership in one or more of the above specified groups. An enhanced penalty is also imposed on any person who commits or attempts to commit a felony against the property of a public agency or private institution because the property is identified or associated with a person who is a member of, or a group that is included within, one of the groups specified above. Additionally, existing law imposes enhanced penalties on a person who commits or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, and on a person for each prior felony conviction committed because of the victim's membership in any of the groups just specified.

This bill would amend the last 2 provisions summarized above, and an intent section of an act relating to the prevention of street terrorism, by adding gender to the list of groups in which the victim's membership entitles the victim to protection under those statutes. This bill would also define "gender" for purposes of the provisions summarized in this digest and other specified provisions, to mean the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity or appearance, whether or not that identity or appearance is different from that traditionally associated with the victim's sex at birth. By expanding the definition of an enhancement, this bill would impose a state-mandated local program. The bill would state that this definition section does not constitute a change in, but is declaratory of, existing law.

(2) Existing law expresses the Legislature's intent that every person regardless of race, color, creed, religion, or national origin, has the right to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.

This bill would add a person's gender to the above list of characteristics that are protected by law.

(3) Existing law requires the Attorney General to direct local law enforcement agencies to report to the Department of Justice, information regarding physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability.

This bill would add gender to the list of victim characteristics in the above reporting provision. By increasing the reporting duties of local officials, this bill would impose a state-mandated local program.

(4) This bill would incorporate additional changes in Section 422.75 of the Penal Code proposed by SB 2168, to be operative if SB 2168 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

(5) This bill would incorporate a cross reference to Section 190.03 of the Penal Code that would be added by AB 2324, to be operative only if both this bill and AB 2324 are enacted and become operative on or before January 1, 1999, and AB 2324 adds Section 190.03 to the Penal Code.

(6) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. Section 186.21 of the Penal Code is amended to read:

186.21. The Legislature hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the

intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

SEC. 2. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) (1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman) (1995) 10 Cal. 4th 735.

SEC. 2.5. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because

he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5, 12022.53, or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) (1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman)(1995) 10 Cal. 4th 735.

SEC. 3. Section 422.76 is added to the Penal Code, to read:

422.76. For purposes of Section 186.21, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

SEC. 3.1. Section 422.76 is added to the Penal Code, to read:

422.76. For purposes of Sections 186.21, 190.03, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

SEC. 4. Section 11410 of the Penal Code is amended to read:

11410. The Legislature finds and declares that it is the right of every person regardless of race, color, creed, religion, gender, or national origin, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of rights protected by the Constitution of the United States. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The Legislature further finds however, that the advocacy of unlawful violent acts by groups against other persons or groups under circumstances where death or great bodily injury is likely to result is not constitutionally

protected, poses a threat to public order and safety and should be subject to criminal and civil sanctions.

SEC. 5. Section 13023 of the Penal Code is amended to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 6. Section 13519.6 of the Penal Code is amended to read:

13519.6. (a) The commission shall, on or before December 31, 1993, develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. "Hate crimes," for purposes of this section, means any act of intimidation, harassment, physical force, or the threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability, or sexual orientation, with the intention of causing fear and intimidation.

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following procedures and techniques:

(1) Indicators of hate crimes.

(2) The impact of these crimes on the victim, the victim's family, and the community.

(3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.

(4) Law enforcement procedures, reporting, and documentation of hate crimes.

(5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b).

(d) The course of training leading to the basic certificate issued by the commission shall, not later than July 1, 1994, include the course of instruction described in subdivision (a).

(e) As used in this section, "peace officer" means any person designated as a peace officer by Section 830.1 or 830.2.

SEC. 7. Section 422.76 of the Penal Code as added by Section 3 of this act does not constitute a change in, but is declaratory of, existing law.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 422.75 of the Penal Code proposed by both this bill and SB 2168. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 422.75 of the Penal Code, and (3) this bill is enacted after SB 2168, in which case Section 422.75 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 9. Section 3.1 of this bill shall become operative only if (1) both this bill and AB 2324 are enacted and become effective on or before January 1, 1999, and (2) AB 2324 adds Section 190.03 to the Penal Code, in which case Section 3 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

Assembly Bill No. 715

CHAPTER 626

An act to amend Sections 12512, 12520, and 12544 of the Government Code, and to amend Section 13023 of the Penal Code, relating to the Attorney General.

[Approved by Governor September 24, 2000. Filed with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 715, Firebaugh. Attorney General duties: criminal information reporting.

(1) Existing law requires the Attorney General to prosecute and defend all causes to which the state or state officers in their official capacities are parties, as well as all causes to which any county is a party, unless the interest of the county is adverse to the state or state officers in their official capacities.

This bill would repeal the above-described provisions regarding the prosecution and defense of causes to which any county is a party.

(2) Existing law prohibits the Attorney General from employing special counsel, except when those cases concern escheated property and the supervision of district attorneys.

This bill would provide that this prohibition does not affect the right of the Attorney General to employ counsel to represent or assist in the representation of a state agency, as defined, or a state employee if the representation meets specified standards.

(3) Existing law provides that, if an escheat proceeding is prosecuted by the regular staff of the Attorney General's office, the Attorney General shall recover the costs and charges of commencing and filing a suit to recover escheated property from the escheated funds, by presenting a claim.

This bill would repeal the requirement that the action be prosecuted by the regular staff of the Attorney General's office, and make other technical changes.

(4) Existing law requires the Attorney General to direct local law enforcement agencies to report to the Department of Justice, information that may be required relative to criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability.

This bill would add national origin to the list of victim characteristics in this reporting requirement. By increasing the

reporting duties of local officials, this bill would impose a state-mandated local program.

(5) 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 12512 of the Government Code is amended to read:

12512. The Attorney General shall attend the Supreme Court and prosecute or defend all causes to which the State, or any State officer is a party in his or her official capacity.

SEC. 2. Section 12520 of the Government Code is amended to read:

12520. (a) The Attorney General may not employ special counsel in any case except pursuant to either of the following:

(1) Article 3 (commencing with Section 12540).

(2) Article 4 (commencing with Section 12550).

(b) Subdivision (a) does not affect the right of the Attorney General to employ counsel to represent, or to assist in the representation of, a state agency as defined in Section 11000, including the Attorney General or the Department of Justice, or to represent a state employee if that representation meets any of the standards set forth in paragraph (3), (5), (7), (8), (9), or (10) of subdivision (b) of Section 19130.

SEC. 3. Section 12544 of the Government Code is amended to read:

12544. If an escheat proceeding is prosecuted by the staff of the Attorney General's office, the Attorney General shall recover, by presenting a claim to the Controller, all costs and charges of commencing and prosecuting the suit, from the funds so escheated. Those claims shall be paid from the Abandoned Property Account in the Unclaimed Property Fund and credited to and in augmentation of any support appropriation of the Attorney General. The costs and charges may not in any case exceed 10 per cent of the sum or sums actually escheated to the State in those suits.

SEC. 4. Section 13023 of the Penal Code is amended to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 5. 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.

O

Assembly Bill No. 491

CHAPTER 571

An act to amend Sections 11106, 12025, and 12031 of the Penal Code, relating to firearms.

[Approved by Governor September 28, 1999. Filed with Secretary of State September 29, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 491, Scott. Firearms.

(1) Existing law requires the Attorney General to maintain a registry of specified information concerning pistols, revolvers, and other firearms capable of being concealed on the person and to include in the registry specified data provided to the Department of Justice on the Dealers' Record of Sale.

This bill would require the Attorney General, at the written request of any person listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, to store and keep that record electronically and to provide the person written notice of its compliance with the request.

This bill would also incorporate additional changes in Section 11106 of the Penal Code proposed by SB 29, to be operative only if that bill and this bill are enacted and become effective on or before January 1, 2000, and this bill is enacted last.

(2) Existing law generally provides that it is a misdemeanor for any person to carry a concealed firearm. Under specified circumstances, carrying a concealed firearm is punishable as a felony. One of these circumstances includes a person who is not in lawful possession of the firearm. "Lawful possession" is defined to mean a person who owns the firearm or has permission of the owner or a person with apparent authority.

This bill would punish as a misdemeanor or a felony, carrying a concealed firearm if both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person or are readily accessible, or the firearm is loaded, as defined by law, where the person in possession is not the registered owner of the firearm, as specified. This bill would allow a peace officer to arrest a person for violating this provision if the officer had probable cause to believe the person was not the registered owner of the firearm and the other elements of this offense exist. The bill would also redefine the term "lawful possession" to mean one who lawfully owns or has permission of the lawful owner. In addition, the bill would require the district attorney of each county

to submit an annual report to the Attorney General consisting of profiles of persons charged with felonies or misdemeanors under this concealable firearm provision. Under the bill, the Attorney General would be required to submit an annual report to the Legislature compiling all of the reports submitted by the district attorneys. By increasing the punishment for a crime and increasing the duties of local officials, this bill would impose a state-mandated local program.

(3) Existing law provides that every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street, as specified, is guilty of a misdemeanor except in specified circumstances where this offense is punishable as a felony.

This bill would punish as a misdemeanor or a felony, possession of a loaded pistol, revolver, or other firearm capable of being concealed upon the person where the person in possession is not the registered owner of the firearm, as specified. The bill would allow a peace officer to arrest a person for violating this provision if the officer had probable cause to believe the person was not the registered owner of the firearms and the other elements of this offense exist. The bill would also incorporate in this provision the changes described in (2) above regarding the definition of "lawful possession" and the requirement imposed upon the district attorney.

(4) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12072 or 12078, forms provided pursuant to

Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105 or to the person listed in the registry as the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

SEC. 1.5. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen,

or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12072 or 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the

Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(E) Information provided pursuant to paragraphs (19) and (20) of subdivision (b) of Section 12071.

(F) Information provided pursuant to paragraph (8) of subdivision (d) of Section 12084.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105 or to the person listed in the registry as the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing

photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

SEC. 2. Section 12025 of the Penal Code is amended to read:

12025. (a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) By imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment if both of the following conditions are met:

(A) Both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are either in the immediate possession of the person or readily accessible to that person, or the pistol, revolver, or other firearm capable of being

concealed upon the person is loaded as defined in subdivision (g) of Section 12031.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106, as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (b) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (b) is met.

(d) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by this chapter, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(g) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a

person who has lawful custody of the firearm does not have lawful possession of the firearm.

(h) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

SEC. 3. Section 12031 of the Penal Code is amended to read:

12031. (a) (1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(2) Carrying a loaded firearm in violation of this section is punishable, as follows:

(A) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(B) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(C) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(D) Where the person is not in lawful possession of the firearm, as defined in this section, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(E) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(F) Where the person is not listed with the Department of Justice pursuant to Section 11106, as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or both that fine and imprisonment.

(G) In all cases other than those specified in subparagraphs (A) to (F), inclusive, as a misdemeanor, punishable by imprisonment in

a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully acquired and lawfully owns the firearm or has the permission of the lawful owner or person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

(4) Nothing in this section shall preclude prosecution under Sections 12021 and 12021.1 of this code, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(5) (A) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(i) When the person arrested has violated this section, although not in the officer's presence.

(ii) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(B) A peace officer may arrest a person for a violation of subparagraph (F) of paragraph (2), if the peace officer has probable cause to believe that the person is carrying a loaded pistol, revolver, or other firearm capable of being concealed upon the person in violation of this section and that person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(6) (A) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in a county jail, or, if granted probation or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

(B) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(7) A violation of this section which is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry

a loaded firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke for good cause the retired officer's privilege to carry a loaded firearm. A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have his or her privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

(3) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977, or (B) if hired on or after that date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies, including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the

agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age or more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons, or by persons who are authorized to carry the weapons pursuant to Section 14502 of the Corporations Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as a peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities

Commission authority (A) if hired prior to January 1, 1977, or (B) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their places of employment, and security guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any

officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

(m) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative only until January 1, 2005.

SEC. 3.5. Section 1.5 of this bill incorporates amendments to Section 11106 of the Penal Code proposed by both this bill and Senate Bill 29. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 11106 of the Penal Code, and (3) this bill is enacted after Senate Bill 29, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other 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.

O

RESOLUTION CHAPTER 147

Senate Concurrent Resolution No. 64—Relative to crime statistics.

[Filed with Secretary of State August 30, 1982.]

WHEREAS, At the present time, there is no systematic collection of the ages of crime victims; and

WHEREAS, In order to better understand the problem of crime as it affects senior citizens, systematic collection of this information on a statewide basis is essential; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older; and be it further

Resolved, That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages of victims of crime and to incorporate that information in its crime statistic reporting system; and be it further

Resolved, That the Secretary of the Senate send copies of this resolution to the Attorney General.

RESOLUTION CHAPTER 148

Senate Concurrent Resolution No. 86—Relative to the John "Chuck" Erreca Safety Roadside Rest.

[Filed with Secretary of State August 30, 1982.]

WHEREAS, John "Chuck" Erreca was born on December 29, 1910, in the City of Los Banos, in the County of Merced, the son of immigrant French Basques; and

WHEREAS, He grew up in the "American tradition" of hard work on his father's ranch; and

WHEREAS, He attended public schools in Los Banos, and graduated from St. Mary's College, majoring in Economics; and

WHEREAS, He returned to the ranch near Los Banos and became a successful farmer and cattle rancher; and

WHEREAS, His success in farming and ranching enabled him to participate in civic affairs and serve without salary for 23 years on the Los Banos City Council, 17 years of which he was the Mayor of the City; and

WHEREAS, He served as an officer and president of the Central Valley Division of the League of California Cities from 1951–1953; and

WHEREAS, In 1953 "Chuck" Erreca was elected to the Board of

CRIMINAL STATISTICS

REPORTING REQUIREMENTS

CALIFORNIA

DEPARTMENT OF JUSTICE

CRIMINAL JUSTICE

STATISTICS CENTER

March 2000

Table of Contents

Introduction

This document provides general guidelines to law enforcement agencies, District Attorneys, Public Defenders, and Probation Departments regarding their reporting requirements to the Department of Justice's Criminal Justice Statistics Center (CJSC). For each reporting requirement there is a brief description of what data is collected (introduction), which agencies are required to report the data (who), the code section(s) that require reporting (why), the due date of the report (when), and the form or alternative method required to be used to report the data (how).

For any additional information or clarification, please write or call our Special Requests Unit. They can be reached by telephone, FAX or e-mail:

California Department of Justice Telephone: (916) 227-3509

Division of Criminal Justice Information Services Fax: (916) 227-0427

Criminal Justice Statistics Center E-mail: CJSC@hdcdojnet.state.ca.us

Special Requests Unit

4949 Broadway, Room E-203

Sacramento, CA 95820

ARRESTS

Introduction

Arrest information is reported to the Department of Justice (DOJ), and is maintained in the Monthly Arrest and Citation Register data base. This data base contains information on felony and misdemeanor level arrests for adults and juveniles. Data elements include name, race/ethnicity, date of birth, sex, date of arrest, offense level, offense type, status of the offense, and law enforcement disposition. This information is used in publishing *Crime and Delinquency in California* and the *Criminal Justice Profile* series. Age, sex, race/ethnicity, and offense information is forwarded to the FBI for publication in *Crime in the United States*.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

PC 13021. Local law enforcement agencies shall report to the Department of Justice such information as the Attorney General may by regulation require relative to misdemeanor violations of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form JUS 750, or electronically.

CRIMES AND CLEARANCES

Introduction

Crimes and clearance information is to be reported to DOJ to provide statistical data on the offenses of criminal homicide, forcible rape, robbery, assault, burglary, larceny-theft, and motor vehicle theft. The data is to include the number of actual offenses as well as the number of clearances. Supplemental data are also collected on the nature of crime and the value of property stolen and recovered. This information is forwarded to the FBI for publication in *Crime in the United States*. Data are also published in *Crime and Delinquency in California* and the *Criminal Justice Profile* Series.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him

or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 4-927 (Return A) and JUS 729, or electronically.

ARSON

Introduction

Arson data is to be reported to DOJ to provide information on the type of arson, the number of actual offenses, the number of clearances, and the estimated dollar value of property damaged. This data is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 1-725, or electronically.

HOMICIDES

Introduction

Homicide data is to be reported to DOJ to provide information on the number of homicides, the victim/offender relationship, the day and month of the homicide, location, type of weapon used, and precipitating event. Homicide data are published in *Homicide in California, Crime and Delinquency in California*, and the *Criminal Justice Profile* series. Data are also reported to the FBI for publication in *Crime in the United States.*

Homicides (continued)

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13014. (b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background

PC 13022. Each sheriff and chief of police shall annually furnish the Department of Justice, on a form prescribed by the Attorney General, a report of all justifiable homicides committed in his jurisdiction. In cases where both a sheriff and chief of police would be required to report a justifiable homicide under this section, only the chief of police shall report such homicide.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form BCS-15 along with the Return A, or electronically.

HATE CRIMES

Introduction

Hate Crime data is to be reported to DOJ to provide information on the location of crime, type of bias-motivation, victim type (individual/property), number of victims/suspects, and victim's/suspect's race. This information is provided to the FBI for publication in *Crime in the Untied States* and published in *Hate Crime in California*, an annual report to the California Legislature.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

Hate Crimes (continued)

When

Reports are due monthly, by the 15th working day of the month.

How

Reporting may be accomplished manually by submitting the agency Crime Report, or electronically.

LAW ENFORCEMENT OFFICERS KILLED OR ASSAULTED

Introduction

Data on peace officers that were killed or assaulted in the line of duty is to be reported to DOJ to provide information on the type of criminal activity, type of weapon used, type of assignment, time of assault, number with or without personal injury, police assaults cleared, and officers killed by felonious act or by accident or negligence. This information is published in *Crime and Delinquency in California* and *Homicide in California.*

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State

Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 1-705 or FBI 4-927 (Return A), or electronically.

DOMESTIC VIOLENCE RELATED CALLS FOR ASSISTANCE

Introduction

Domestic violence information is to be reported to DOJ to provide monthly summary statistical data on the number of domestic violence-related calls received, number of cases involving weapons, and the type of weapon used during the incident. This information is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 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.

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

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

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

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form CJSC 715, or electronically.

VIOLENT CRIMES COMMITTED AGAINST SENIOR CITIZENS

Introduction

Information regarding violent crimes committed against senior citizens is to be reported to DOJ to provide summary data on the number of persons 60 years of age or older who were victims of homicide, forcible rape, robbery, and aggravated assault.

Violent Crimes Committed Against Senior Citizens (continued)

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

Senate Resolution 64, Chapter 147, 1982, be it resolved by the Senate of the State of California, the Assembly thereof concurring, That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form BCS 727, or electronically.

DEATH IN CUSTODY

Introduction

Information on persons who die while in the custody of a local or state law enforcement agency is to be reported to DOJ to provide descriptive statistical information on the circumstances relating to the death.

Who

Sheriff Departments, Police Departments, Probation Departments and other state and local agencies with peace officer powers.

Why

GC 12525. In any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the Attorney General, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. These writings are public records within the meaning of subdivision (d) of Section 6252 of the California Public Records Act (Chapter 3.5 (commencing with

Section 6250) of Division 7 of Title 1), are open to public inspection pursuant to Sections 6253, 6256, 6257, and 6258. Nothing in this section shall permit the disclosure of confidential medical information that may have been submitted to the Attorney General's office in conjunction with the report except as provided in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

Death in Custody (continued)

When

Reports are due as needed, within 10 days of the date of death.

How

Reporting is accomplished manually by submitting form CJSC 713.

ADULT PROBATION

Introduction

Data regarding adult probation is to be reported to DOJ to provide a statistical profile of the probation function for superior and lower courts by county, type of placement, reasons for removal from probation, and the number of persons in supervision caseloads. This data is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Probation Departments.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting is accomplished manually by submitting form CJSC 726.

JUVENILE COURT AND PROBATION STATISTICAL SYSTEM

Introduction

Juvenile justice data is to be reported to DOJ to provide information on the administration of juvenile justice in California. Information is collected on a juvenile's progress through the juvenile justice system from probation intake to final case disposition.

Who

Probation Departments.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

WI 285. All probation officers shall make such periodic reports to the Bureau of Criminal Statistics as the bureau may require and upon forms furnished by the bureau, provided that no names or social security numbers shall be transmitted regarding any proceeding under Section 300 or 601.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting is accomplished electronically, by cartridge or diskette, using JCPSS software.

CONCEALABLE WEAPONS STATISTICAL SYSTEM

Introduction

Concealable weapon data is to be reported to DOJ to provide information on race, ethnicity, age, and gender for each individual charged with a felony or a misdemeanor for carrying either a concealed weapon or loaded firearm.

Who

District Attorneys.

Why

PC 12025(h) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

PC 12031(m) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form CJSC 4, or electronically, through the Attorney General's LegalNet system or file transfer protocol.

HATE CRIME PROSECUTION SURVEY

Introduction

Hate crime data is to be reported to DOJ to provide information regarding criminal acts to cause physical injury, emotional suffering or property damage where there is a reasonable cause to believe that the crime was motivated by the victim's race, ethnicity, religion, gender, sexual orientation or physical or mental disability.

Who

District Attorneys.

Hate Crime Prosecution Survey (continued)

Why

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts

or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

When

Annually - the first week in February.

How

Reporting is accomplished manually by submitting form CJSC 5.

LAW ENFORCEMENT AND CRIMINAL JUSTICE PERSONNEL SURVEYS

Introduction

Agencies are to report to DOJ the number of full time, sworn and civilian male and female law enforcement personnel employed by law enforcement agencies, District Attorneys, Public Defenders or Probation Departments. Data are provided to the FBI for publication in *Crime in the United States.* Data are also published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, District Attorneys, Public Defenders, Probation Departments and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority,

Law Enforcement and Criminal Justice Personnel Surveys (continued)

Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Annually - date specified for each agency.

How

Reporting is accomplished manually by submitting form JUS 02.

CITIZENS' COMPLAINTS AGAINST PEACE OFFICERS SURVEY

Introduction

Agencies are to report to DOJ statewide summary information on the number of non-criminal and criminal (misdemeanor and felony) complaints reported by citizens to law enforcement agencies, and the number of complaints that were sustained. Data are published in *Crime and Delinquency in California.*

Who

Sheriff Departments, Police Departments, District Attorneys, Probation Departments and other state and local agencies with peace officer powers.

Why

PC 13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(d) The number of citizens' complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

When

Annually - the third week of December.

How

Reporting is accomplished manually by submitting form CJSC 724.

Data	Reporting Agencies						Frequency	Statute	Reporting Form	Electronic Reporting
	SD	PD	Other*	District Attorneys	Public Defenders	Probation Dept.				
Arrests	X	X	X				Monthly-10th working day	PC 13020 and PC 13021	JUS 750	X
Crimes and Clearance	X	X	X				Monthly-10th working day	PC 13020	FBI 4-927, JUS 729	X
Arson	X	X	X				Monthly-10th working day	PC 13020	FBI 1-725	X
Homicides	X	X	X				Monthly-10th working day	PC 13014(b) and PC 13022	BCS 15 Return A	X
Hate Crimes	X	X	X				Monthly-15th working day	PC 13023	Agency Crime Report	X
Law Enforcement Officers Killed or Assaulted	X	X	X				Monthly-10th working day	PC 13020	FBI 1-705, FBI 4-927	X
Domestic Violence Related Calls for Assistance	X	X	X				Monthly-10th working day	PC 13730(a)(c)	CJSC 715	X
Violent Crimes Committed Against Senior Citizens	X	X	X				Monthly-10th working day	Senate Resolution 64, Chapter 147, 1982	BCS 727	X
Death in Custody	X	X	X			X	As needed w/in 10 days of death	GC 12525	CJSC 713	None
Adult Probation						X	Monthly-10th working day	PC 13020	CJSC 726	None
Juvenile Court and Probation Statistical System						X	Monthly-10th working day	PC 13020 and WI 285	None	X
Concealable Weapons Statistical System				X			Monthly-10th working day	PC 12025(h) and PC 12031(m)	CJSC 4	X
Law Enforcement & Criminal Justice Personnel Surveys	X	X	X	X	X	X	Annually Varies by agency	PC 13020	JUS 02	None
Citizens' Complaints Against Peace Officers Survey	X	X	X	X		X	Annually December 15	PC 13012(d)	CJSC 724	None
Hate Crime Prosecution Survey				X			Annually February 4	PC 13023	CJSC 5	None

*State and local agencies with peace officer powers.

March 2000

ORIGINAL

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 1 (2 91)

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COMMISSION ON STATE MANDATES

Claim No 02-TC-11

TEST CLAIM FORM

Local Agency or School District Submitting Claim

County of Sacramento

Contact Person

Allan P. Burdick/Juliana F. Gmur (MAXIMUS, INC.)

Telephone No.

(916) 485-8102
Fax (916) 485-0111

Address

4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIIIB 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.

Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999; Senate Resolution 64, Chapter 147, 1982; California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000; and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Althea Rivers, Records Bureau Manager

Telephone No.

(916) 874-6032

Signature of Authorized Representative

Althea M. Rivers

Date:

11/18/02

BEFORE THE
COMMISSION ON STATE MANDATES

Test Claim of:
County of Sacramento

Crime Statistic Reports for the Department of Justice

Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999; Senate Resolution 64, Chapter 147, 1982; California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000; and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

Beginning in 1955, the Legislature, through enactments in the Penal Code, set forth requirements that the Department of Justice (DOJ) must prepare statistical reports for review. Pursuant to Penal Code §§13020 and 13021, local law enforcement were required to comply with the DOJ and begin collecting statistical crime data. Reports were then generated and submitted to the DOJ either monthly or annually depending on the nature of the information the report contained.. At that time, only a few reports were required. In the late 1970's and through to present time, these reports have increased in number and complexity. Now, at least 10 types of reports are due monthly and three more due annually reporting on various issues such as homicide, domestic violence, citizen complaints, and hate crimes.

Section 13012 of the Penal Code, added in 1955, sets forth the required contents of an annual report by the DOJ. The DOJ, in turn requires all local agencies with police powers including sheriffs, police, District Attorneys and probation officers, to gather and to report general statistical information on all adult offenders annually. Chapter 1340, Statutes of 1980, added the requirement that local agencies report the number of citizens' complaints, the number of complaints that alleged criminal conduct, and the number of

complaints within each category of crime. Chapter 803, Statutes of 1995, expanded the reporting to include all juvenile offenders. Finally Chapter 468, Statutes of 2001, added that the report on juveniles must include any administrative action taken by law enforcement or correctional agencies dealing with minors in the juvenile justice system where the minor had a criminal case either transferred to or initiated in adult criminal court. The DOJ requires report number CJSC 724 be filed annually.

Penal Code §13012 currently reads:

> The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:
> (a) The amount and the type of offenses known to public authorities.
> (b) The personal and social characteristics of criminals and delinquents.
> (c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.
> (d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal and correctional agencies, , including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.
> (e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.
> It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

Section 13014 of the Penal Code, added by Chapter 1338, Statutes of 1992, requires all local entities responsible for the investigation or prosecution of homicides submit a report

to the DOJ containing victim and offender demographic information. The DOJ requires report number BCS 15 be submitted monthly.

Penal Code §13014 reads, in pertinent part:

> (b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime including age, gender, race and ethnic background.

Section 13023 of the Penal Code, added by Chapter 1172, Statutes of 1989, requires local law enforcement agencies to report criminal acts or attempted criminal acts commonly referred to as hate crimes. The DOJ requires that sheriffs and police file its Agency Crime Report monthly and District attorneys file report number CJSC 5 on hate crime prosecution annually. Chapter 933, Statutes of 1998, expanded the parameters of a hate crime to include gender. Chapter 626, Statutes of 2001, further expanded the parameters to include national origin.

Penal Code §13023 currently reads:

> Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be proscribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

Section 12025 of the Penal Code, added in 1953, makes carrying a concealed weapon a crime. This statute has been amended several times but most recently, Chapter 571, statutes of 1999, added a reporting requirement for local District Attorneys for an annual report. The DOJ requires that report number CJSC 4 be submitted monthly.

Penal Code §12025 reads, in pertinent part:

> (h)(1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney

> General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offence charged in the same complaint, indictment, or information.

Section 12031 of the Penal Code, added in 1967, makes carrying a loaded firearm a crime. This statute has been amended nearly every year but most recently, Chapter 571, statutes of 1999, added a reporting requirement for local District Attorneys for an annual report. The DOJ requires that report number CJSC 4 be submitted monthly.

Penal Code §12031 reads, in pertinent part:

> (m)(1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offence charged in the same complaint, indictment, or information.

Section 13730 of the Penal Code, added by Chapter 1609, Statutes of 1984, requires that local law enforcement develop a system for recording all domestic violence-related calls. Chapter 1230, Statutes of 1993, amended the statute to require a written incident report. Chapter 965, Statutes of 1995, expanded the information be recorded to include whether the abuser was under the influence or if law enforcement had had prior calls to that same address with the same parties. Chapter 483, Statutes of 2001, further required a recordation of whether the officer at the scene had to inquire regarding the presence of firearms or other deadly weapon. The compiled information is required to be submitted in report number CJSC 715 to the DOJ monthly.

Penal Code §13730 currently reads:

> (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 by 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 complied 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 call received by agency, city, and county.

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

Senate Resolution 64, Chapter 147, Statues of 1982, requests local law enforcement to modify data gathering procedures to collect information on the number of victims of crime who are 60 years of age or older. The DOJ requires that reports concerning violent crime against senior citizens are submitted monthly report number BCS 727.

Although some of the legislation places the duty to report to the Legislature squarely on the shoulders of the State Department of Justice, the DOJ is quick to pass the brunt of this effort onto local agencies. The net effect of this legislation is to require local law enforcement to act as statisticians and data collectors for the state Department of Justice. Thus, the total costs of these claims are reimbursable.

The County of Sacramento does not have full estimates on the costs of this program, but same are substantially in excess of $1000 per year.

LEGISLATIVE HISTORY PRIOR TO 1975

Prior to 1975, certain types of reports were required to be filed with the DOJ. These reports included information on arrests, arson, crimes and clearances, law enforcement personnel killed or assaulted, deaths of individuals while in custody, probation, and law enforcement and criminal justice personnel surveys.

There was no requirement prior to 1975, nor in any of the intervening years, until the passage of the aforementioned Chapters which mandated reports in other areas. These Chapters created an expanded list of reporting requirements including information on domestic violence, homicide, hate crimes, concealed weapons, loaded firearms, violent crimes against senior citizens and citizens' complaints.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

As related above, the mandated activities are contained in Penal Code §§13012, 13014, 13023, 12025, 12031, and 13730. These sections directly relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The County of Sacramento does not have full estimates on the costs of discharging this program, but estimates that the costs will substantially exceed $1000.00 per year.

E. REIMBURSABLE COSTS MANDATED BY THE STATE

The costs incurred by County of Sacramento as a result of the statute on which this test claim is based are all reimbursable costs as such costs are "costs mandated by the State" under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines "costs mandated by the state", and specifies the following three requirements:

1. There are "increased costs which a local agency is required to incur after July 1, 1980."

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975."

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 XIIIB of the California Constitution."

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

F. MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles* v. *State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the "unique to government" and the "carry out a state policy" tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

Only local government employs law enforcement. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes to avail itself of a collection of crime statistics. These statistics are not only for the use of the Legislature but also for use by state agencies for reports and implementation of policy regarding the prevention of crime and delinquency.

In summary, the statutes mandates that the County of Sacramento bear the burden of obtaining the necessary information, distilling that information into reports and submitting same to the DOJ mostly on a monthly basis. The County of Sacramento believes that the additional reporting requirements satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.

2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

3. 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.

4. 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.

5. 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.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.

7. 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.

None of the above disclaimers have any application to the test claim herein stated by the County of Sacramento.

CONCLUSION

The enactment of Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999 and Senate Resolution 64, Chapter 147, 1982 imposed a new state mandated program and cost on the County of Sacramento by requiring additional reports be submitted generally on a monthly basis to the DOJ. To create such reports, local law informant is placed in the position of having to compile various data and complete a laundry list of reports, each with a specific timeline for submission. The mandated program meets all of the criteria and tests for the Commission on State Mandates to find a reimbursable state mandated program. None of the so-called disclaimers or other statutory or constitutional provisions that would relieve the State from its constitutional obligation to provide reimbursement have any application to this claim.

G. CLAIM REQUIREMENTS

The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

Exhibit 1: Chapter 1340, Statutes of 1980
Exhibit 2: Chapter 803, Statutes of 1995
Exhibit 3: Chapter 468, Statutes of 2001

Exhibit 4:	Chapter 1338, Statutes of 1992
Exhibit 5:	Chapter 1609, Statutes of 1984
Exhibit 6:	Chapter 1230, Statutes of 1993
Exhibit 7:	Chapter 965, Statutes of 1995
Exhibit 8:	Chapter 483, Statutes of 2001
Exhibit 9:	Chapter 1172, Statutes of 1989
Exhibit 10:	Chapter 933, Statutes of 1998
Exhibit 11:	Chapter 626, Statutes of 2000
Exhibit 12:	Chapter 571, Statutes of 1999
Exhibit 13:	Senate Resolution 64, Chapter 147, 1982
Exhibit 14:	California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000
Exhibit 15:	California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000

CLAIM CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 18 day of November, 2002, at Sacramento, California, by:

Althea M. Rivers

Althea Rivers
Records Bureau Manager
Sheriff's Department
County of Sacramento

DECLARATION OF ALTHEA RIVERS

I, Althea Rivers, make the following declaration under oath:

I am the Records Bureau Manager for the Sheriff's Department of the County of Sacramento. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the County of Sacramento's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "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 stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 18 day of November, 2002, at Sacramento, California.

Althea M. Rivers

Althea Rivers
Records Bureau Manager
Sheriff's Department
County of Sacramento

(commencing with Section 5250) of Chapter 2 of this part, and for the purposes of Chapter 3 (commencing with Section 5350) of this part, "gravely disabled" means:

(1) A condition in which a person, as a result of a mental disorder, is unable to provide for his basic personal needs for food, clothing, or shelter; or

(2) A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist:

(i) The indictment or information pending against the defendant at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person.

(ii) The indictment or information has not been dismissed.

(iii) As a result of mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him and to assist counsel in the conduct of his defense in a rational manner.

For purposes of Article 3 (commencing with Section 5225) and Article 4 (commencing with Section 5250), of Chapter 2 of this part, and for the purposes of Chapter 3 (commencing with Section 5350) of this part, "gravely disabled" means a condition in which a person, as a result of impairment by chronic alcoholism, is unable to provide for his basic personal needs for food, clothing, or shelter.

The term "gravely disabled" does not include mentally retarded persons by reason of being mentally retarded alone;

(i) "Peace officer" means a duly sworn peace officer as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code who has completed the basic training course established by the Commission on Peace Officer Standards and Training, or any parole officer or probation officer specified in Section 830.5 of the Penal Code when acting in relation to cases for which he or she has a legally mandated responsibility;

(j) "Postcertification treatment" means an additional period of treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of this part;

(k) "Court," unless otherwise specified, means a court of record or a justice court;

(*l*) A gravely disabled minor is a minor who, as a result of a mental disorder, is unable to use the elements of life which are essential to health, safety, and development, including food, clothing, and shelter, even though provided to the minor by others.

SEC. 38.6. It is the intent of the Legislature, if this bill and Assembly Bill 1893 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 830.4 of the Penal Code, and this bill is chaptered after Assembly Bill 1893, that Section 830.4 of the Penal Code, as amended by Section 12 of this act, shall remain operative until the effective date of Assembly Bill 1893, and that on the effective date of Assembly Bill 1893, Section 830.4 of the

Penal Code, as amended by Section 12 of this act, be further amended in the form set forth in Section 12.5 of this act to incorporate the changes in Section 830.4 proposed by Assembly Bill 1893. Therefore, if this bill and Assembly Bill 1893 are both chaptered and become effective on or before January 1, 1981, and Assembly Bill 1893 is chaptered before this bill and amends Section 830.4, Section 12.5 of this act shall become operative on the effective date of Assembly Bill 1893.

SEC. 38.7. It is the intent of the Legislature, if this bill and Assembly Bill 3217 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 830.6 of the Penal Code, and this bill is chaptered after Assembly Bill 3217, that Section 830.6 of the Penal Code, as amended by Section 15 of this act, shall remain operative until the effective date of Assembly Bill 3217, and that on the effective date of Assembly Bill 3217, Section 830.6 of the Penal Code, as amended by Section 15 of this act, be further amended in the form set forth in Section 15.5 of this act to incorporate the changes in Section 830.6 proposed by Assembly Bill 3217. Therefore, if this bill and Assembly Bill 3217 are both chaptered and become effective on or before January 1, 1981, and Assembly Bill 3217 is chaptered before this bill and amends Section 830.6, Section 15.5 of this act shall become operative on the effective date of Assembly Bill 3217.

SEC. 38.8. It is the intent of the Legislature, if this bill and Senate Bill 1676 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 1808.4 of the Vehicle Code, and this bill is chaptered after Senate Bill 1676, that Section 1808.4 of the Vehicle Code, as amended by Section 29 of this act, shall remain operative until the effective date of Senate Bill 1676, and that on the effective date of Senate Bill 1676, Section 1808.4 of the Vehicle Code, as amended by Section 29 of this act, be further amended in the form set forth in Section 29.5 of this act to incorporate the changes in Section 1808.4 proposed by Senate Bill 1676. Therefore, if this bill and Senate Bill 1676 are both chaptered and become effective on or before January 1, 1981, and Senate Bill 1676 is chaptered before this bill and amends Section 1808.4, Section 29.5 of this act shall become operative on the effective date of Senate Bill 1676.

SEC. 38.9. It is the intent of the Legislature, if this bill and Senate Bill 1896 are both chaptered and become effective on or before January 1, 1981, both bills amend Section 22702 of the Vehicle Code, and this bill is chaptered after Senate Bill 1896, that Section 22702 of the Vehicle Code, as amended by Section 38 of this act, shall remain operative until the effective date of Senate Bill 1896, and that on the effective date of Senate Bill 1896, Section 22702 of the Vehicle Code, as amended by Section 38 of this act, be further amended in the form set forth in Section 38.2 of this act to incorporate the changes in Section 22702 proposed by Senate Bill 1896. Therefore, if this bill and Senate Bill 1896 are both chaptered and become effective on or before January 1, 1981, and Senate Bill 1896 is chaptered before this

bill and amends Section 22702, Section 38.2 of this act shall become operative on the effective date of Senate Bill 1896.

SEC. 39. It is the intent of the Legislature that the changes effected by this act shall serve only to define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers, and duties; and that there shall be no change in the status of individuals for purposes of retirement, workers' compensation or similar injury or death benefits, or other employee benefits.

SEC. 40. The sum of three million five hundred thousand dollars ($3,500,000) is hereby appropriated from the Peace Officer's Training Fund to the Commission on Peace Officer Standards and Training in augmentation of Item 456 of the Budget Act of 1980 (Ch. 510, Stats. 1980) for allocation to cities, counties, cities and counties, or districts, for the purpose of reimbursing such jurisdictions for peace officer training.

SEC. 41. This act is an urgency statute necessary for the immediate peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Federal law requires that sworn peace officers be available at boarding stations in federally regulated airports throughout the State of California. In order to comply with this federal mandate, peace officer classifications must be created which will permit local governments to employ properly authorized personnel. In addition, state law mandates the responsibility of enforcing certain laws to state employees who are not currently authorized as peace officers to investigate such offenses. This bill would so authorize them.

CHAPTER 1341

An act to amend Sections 4555, 4700 and 4701 of, to add Section 196 to, and to repeal Section 196 of, the Civil Code, relating to family law.

[Approved by Governor September 30, 1980. Filed with Secretary of State September 30, 1980.]

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

SECTION 1. Section 196 of the Civil Code is repealed.

SEC. 2. Section 196 is added to the Civil Code, to read:

196. The father and mother of a child have an equal responsibility to support and educate their child in the manner suitable to the child's circumstances, taking into consideration the respective earnings or earning capacities of the parents.

SEC. 3. Section 4555 of the Civil Code is amended to read:

4555. (a) A final judgment made pursuant to Section 4553 shall not prejudice nor bar the rights of either of the parties to institute

region, or county office shall be made to insure the highest quality educational offerings.

(n) Appropriate qualified staff are employed, consistent with credentialing requirements, to fulfill the responsibilities of the local plan and that positive efforts to employ qualified handicapped individuals are made.

(o) Regular and special education personnel are adequately prepared to provide educational instruction and services to individuals with exceptional needs.

SEC. 38. Notwithstanding Section 2231 or 2234 of the Revenue and Taxation Code and Section 6 of Article XIII B of the California Constitution, no appropriation is made by this act 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.

SEC. 39. (a) The provisions of this act shall become operative on July 1, 1981, except as specified in subdivision (b).

(b) Sections 7, 16, 19, 24, 25, 32, 33, 34, and 35 of this act shall become operative on January 1, 1981.

CHAPTER 1340

An act to amend Section 7522 of the Business and Professions Code, to amend Section 8325 of the Health and Safety Code, to amend Sections 241, 243, 245, 830.1, 830.2, 830.3, 830.4, 830.5, 830.6, 831, 832.4, 12027, 12031, and 13012 of, to add Sections 830.31, 830.7, 830.8, and 830.10 to, and to repeal Sections 243.2, 243.4, 245.2, 245.4, 830.31, 830.35, 830.36, 830.5a, 830.7, 830.10, and 830.11 of, the Penal Code, to amend Sections 165, 1808.4, 2416, 22651, 22653, 22654, 22655, 22656, and 22702 of, and to repeal Sections 165.3, 165.4, 22657.5, and 22659 of, the Vehicle Code, and to amend Section 5008 of the Welfare and Institutions Code, relating to peace officers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1980. Filed with Secretary of State September 30, 1980.]

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

SECTION 1. Section 7522 of the Business and Professions Code is amended to read:

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship, provided that such person at no time carries or uses any deadly weapon in the performance of

is or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while such officer or employee is engaged in the performance of his official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided such part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his duties as such attorney at law.

(g) A licensed collection agency or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) The legal owner of personal property which has been sold under a conditional sales agreement or a mortgagee under the terms of a chattel mortgage.

(j) Any bank subject to the jurisdiction of the Superintendent of Banks of the State of California or the Comptroller of Currency of the United States.

(k) A person engaged solely in the business of securing information about persons or property from public records.

(l) A peace officer of this state or a political subdivision thereof

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while such peace officer is employed by a private employer to engage in off-duty employment in accordance with the provisions of Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who contracts for his or her services or the services of others as a private investigator or private patrol operator.

(m) A retired peace officer of the state or political subdivision thereof when such retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7514.1 or 7514.2. Such officer may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of subdivision (a) of Section 12027 of the Penal Code or paragraph (1) of subdivision (b) of Section 12031 of the Penal Code or has met the requirements set forth in Section 12033 of the Penal Code. However, nothing herein shall exempt such retired peace officer who contracts for his or her services or the services of others as a private investigator or private patrol operator.

SEC. 2. Section 8325 of the Health and Safety Code is amended to read:

8325. Persons designated by a cemetery authority have the powers of arrest as provided in Section 830.7 of the Penal Code for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property.

SEC. 2.1. Section 241 of the Penal Code is amended to read:

241. An assault is punishable by fine not exceeding five hundred dollars ($500), or by imprisonment in the county jail not exceeding six months, or by both. When it is committed against the person of a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, or a fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, the offense shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 2.2. Section 243 of the Penal Code is amended to read:

243. A battery is punishable by fine of not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. When it is committed against the person of a peace officer, as that term is

defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of this code, or a fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, the offense shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

When it is committed against a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or a fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, and an injury is inflicted on such peace officer or fireman, the offense shall be punished by imprisonment in the county jail for a period of not more than one year, or by a fine or not more than one thousand dollars ($1,000), or by imprisonment in the state prison for 16 months, or two or three years. When it is committed against a person and serious bodily injury is inflicted on such person, the offense shall be punished by imprisonment in the county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

As used in this section, "serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

As used in this section "injury" means any physical injury which requires professional medical treatment.

SEC. 3. Section 243.2 of the Penal Code is repealed.

SEC. 3.1. Section 243.4 of the Penal Code is repealed.

SEC. 3.2. Section 245 of the Penal Code is amended to read:

245. (a) Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment. When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument, and such weapon or instrument is owned by such person, the court may, in its discretion, order that the weapon or instrument be deemed a nuisance and shall be confiscated and destroyed in the manner provided by Section 12028.

(b) Every person who commits an assault with a deadly weapon or instrument or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that such victim is a peace officer or fireman

engaged in the performance of his duties, when such peace officer or fireman is engaged in the performance of his duties shall be punished by imprisonment in the state prison for three, four, or five years.

As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commmencing with Section 830) of Title 3 of Part 2 of this code.

SEC. 4. Section 245.2 of the Penal Code is repealed.

SEC. 4.5. Section 245.4 of the Penal Code is repealed.

SEC. 5. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, regularly employed and paid as such, of a county, any policeman of a city, any policeman of a district authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, regularly employed and paid as such, of a judicial district, or any inspector or investigator regularly employed and paid as such in the office of a district attorney, is a peace officer. The authority of any such peace officer extends to any place in the state:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs him; or

(2) Where he has the prior consent of the chief of police, or person authorized by him to give such consent, if the place is within a city or of the sheriff, or person authorized by him to give such consent, if the place is within a county; or

(3) As to any public offense committed or which there is probable cause to believe has been committed in his presence, and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense.

(b) The Deputy Director, assistant directors, chiefs, assistant chiefs, special agents, and narcotics agents of the Department of Justice, and such investigators who are designated by the Attorney General are peace officers. The authority of any such peace officer extends to any place in the state as to a public offense committed or which there is probable cause to believe has been committed within the state.

SEC. 6. Section 830.2 of the Penal Code is amended to read:

830.2. The following persons are peace officers whose authority extends to any place in the state:

(a) Any member of the California Highway Patrol provided, that the primary duty of any such peace officer shall be the enforcement of the provisions of the Vehicle Code or of any other law relating to the use or operation of vehicles upon the highways, as that duty is set forth in the Vehicle Code.

(b) Any member of the California State Police Division provided, that the primary duty of any such peace officer shall be the protection of state properties and occupants thereof.

(c) Members of the California National Guard have the powers of

peace officers when they are (1) called or ordered into active state service by the Governor pursuant to the provisions of Section 143 or 146 of the Military and Veterans Code, (2) serving within the area wherein military assistance is required, and (3) directly assisting civil authorities in any of the situations specified in Section 143 or 146. The authority of any such peace officer extends to the area wherein military assistance is required as to a public offense committed or which there is reasonable cause to believe has been committed within that area. The requirements of Section 1031 of the Government Code are not applicable under such circumstances.

(d) A member of the University of California Police Department appointed pursuant to Section 92600 of the Education Code provided, that the primary duty of any such peace officer shall be the enforcement of the law within the area specified in Section 92600 of the Education Code.

(e) A member of the California State University and College Police Departments appointed pursuant to Section 89560 of the Education Code provided, that the primary duty of any such peace officer shall be the enforcement of the law within the area specified in Section 89560 of the Education Code.

(f) Any member of the Law Enforcement Liaison Unit of the Department of Corrections, provided that the primary duty of any such peace officer shall be the investigation or apprehension of parolees, parole violators, or escapees from state institutions, the transportation of such persons, and the coordination of such activities with other criminal justice agencies.

(g) Members of the Wildlife Protection Branch of the Department of Fish and Game, provided that the primary duty of such deputies shall be the enforcement of the law as set forth in Section 856 of the Fish and Game Code.

(h) Employees of the Department of Parks and Recreation designated by the director pursuant to Section 5008 of the Public Resources Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as set forth in Section 5008 of the Public Resources Code.

SEC. 7. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of such offense, or pursuant to Section 8597 or Section 8598 of the Government Code. Such peace officers may carry firearms only if authorized and under such terms and conditions as are specified by their employing agencies:

(a) Persons employed by the Department of Alcoholic Beverage Control for the enforcement of the provisions of Division 9 (commencing with Section 23000) of the Business and Professions Code and designated by the Director of Alcoholic Beverage Control,

provided that the primary duty of any such peace officer shall be the enforcement of the laws relating to alcoholic beverages, as that duty is set forth in Section 25755 of the Business and Professions Code.

(b) Persons employed by the Division of Investigation of the Department of Consumer Affairs, and investigators of the Board of Medical Quality Assurance and the Board of Dental Examiners, and designated by the Director of Consumer Affairs, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(c) Employees or classes of employees of the Department of Forestry and voluntary fire wardens as are designated by the Director of Forestry pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 4156 of such code.

(d) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 1655 of such code.

(e) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of any such peace officer shall be the enforcement of the provisions of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of the Penal Code.

(f) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 13104 of such code.

(g) Inspectors of the Food and Drug Section as are designated by the chief pursuant to subdivision (a) of Section 216 of the Health and Safety Code, provided that the primary duty of any such peace officer shall be the enforcement of the law as that duty is set forth in Section 216 of such code.

(h) All investigators of the Division of Labor Standards Enforcement, as designated by the Labor Commissioner, provided that the primary duty of any such peace officer shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(i) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs and the Office of Statewide Health Planning and Development, provided that the primary duty of any such peace officer shall be the enforcement of the law relating to the duties of his department, or office.

(j) Marshals and police appointed by the Director of Parks and Recreation pursuant to Section 3324 of the Food and Agricultural Code, provided that the primary duty of any such peace officer shall

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identification number or name of such officer.

SEC. 21. Section 830.11 of the Penal Code is repealed.

SEC. 22. Section 831 of the Penal Code is amended to read:

831. (a) A custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of a city or county who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein.

(b) A custodial officer shall have no right to carry or possess firearms in the performance of his prescribed duties.

(c) Every person, prior to actual assignment as a custodial officer, shall have satisfactorily completed the Commission on Peace Officer Standards and Training courses specified in Section 832 and the jail operations training course created under the minimum standards for local detention facilities established by the Board of Corrections pursuant to Section 6030.

(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section shall not be construed to confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

SEC. 23. Section 832.4 of the Penal Code is amended to read:

832.4. Any undersheriff or deputy sheriff of a county, any policeman of a city, and any policeman of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his employment in order to continue to exercise the powers of a peace officer after the expiration of such 18-month period.

SEC. 24. Section 12027 of the Penal Code is amended to read:

12027. Section 12025 does not apply to or affect any of the following:

(a) Peace officers listed in Section 830.1 or 830.2 whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or

preserving the peace while he is actually engaged in assisting such officer.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at anytime subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this subdivision.

A retired peace officer shall petition the issuing agency for renewal of his or her privilege to carry a concealed firearm every five years. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this subdivision and the date when the endorsement is to be reviewed again.

(b) The possession or transportation by any merchant of unloaded firearms as merchandise.

(c) Members of the Army, Navy, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive such weapons from the United States or this state.

(d) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

(e) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(f) Members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while such members are using any of the firearms referred to in this chapter upon such target ranges, or while going to and from such ranges.

(g) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from such hunting or fishing expedition.

(h) Members of any club or organization organized for the purpose of collecting and displaying antique or historical pistols, revolvers or other firearms, while such members are displaying such weapons at meetings of such clubs or organizations or while going to and from such meetings, or individuals who collect such firearms not designed to fire, or incapable of firing fixed cartridges or fixed shot shells, or other firearms of obsolete ignition type for which ammunition is not readily available and which are generally recognized as collector's items, provided such firearm is kept in the trunk. If the vehicle is not equipped with a trunk, such firearm shall be kept in a locked container in an area of the vehicle other than the utility or glove compartment.

SEC. 25. Section 12031 of the Penal Code is amended to read:

12031. (a) Except as provided in subdivision (b), (c), or (d), every person who carries a loaded firearm on his person or in a

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vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory is guilty of a misdemeanor.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, whether active or honorably retired, other duly appointed peace officers, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any such officers to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer.

The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke, for good cause, the retired officer's privilege to carry a weapon as provided in this paragraph. A retired peace officer shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm in public every five years. Any peace officer who has been honorably retired shall be issued an identification certificate containing an endorsement by the issuing agency indicating whether or not the retired peace officer has the privilege to carry a weapon pursuant to this paragraph and the date when the endorsement is to be reviewed again.

(2) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(3) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of such clubs.

(4) The carrying of concealable weapons by persons who are authorized to carry such weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4 of the Penal Code.

(5) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977; or (B) if hired on or after such date, if they have received a Firearms Qualification Card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (i) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (ii) must be not less than 18 years of age nor more than 40 years of age, (iii) must possess physical qualifications prescribed by the commission, and (iv) are designated by the police commission as the

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owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry such weapons, or by persons who are authorized to carry such weapons pursuant to Section 607f of the Civil Code, while actually engaged in the performance of their duties pursuant to such section.

(3) Harbor policemen designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. Such certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his power as a peace officer, and who is employed while not on duty as such peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority (i) if hired prior to January 1, 1977; or (ii) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators, private patrol operators, and alarm company operators who are licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watchmen employed by any public agency, while acting within the scope and in the course of their employment.

(5) Uniformed security guards, regularly employed and compensated as such by persons engaged in any lawful business, while actually engaged in protecting and preserving the property of their employers and uniformed alarm agents employed by an alarm company operator while on duty. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their name.

(6) Uniformed employees of private patrol operators and uniformed employees of private investigators licensed pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code while acting within the course and scope of their employment as private patrolmen or private

investigators.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case which holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by such person for lawful purposes connected with such business, from having a loaded firearm within such person's place of business, or any person in lawful possession of private property from having a loaded firearm on such property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, during such time and in such area as the hunting is not prohibited by the city council.

(j) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or another is in immediate danger and that the carrying of such weapon is necessary for the preservation of such person or property.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his place of residence, including any temporary residence or campsite.

SEC. 26. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing:

(a) The amount and the types of offenses known to the public authorities;

(b) The personal and social characteristics of criminals and delinquents; and

(c) The administrative actions taken by law enforcement, judicial, penal and correctional agencies or institutions in dealing with criminals or delinquents.

(d) The number of citizens complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of such complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of such statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 26.5. Section 165 of the Vehicle Code is amended to read:

165. An authorized emergency vehicle is:

(a) Any publicly owned ambulance, lifeguard or lifesaving equipment or any privately owned ambulance used to respond to emergency calls and operated under a license issued by the Commissioner of the California Highway Patrol.

(b) Any publicly owned vehicle operated by the following persons, agencies, or organizations:

(1) Any federal, state, or local agency or department employing peace officers as that term is defined in Chapter 4.5 (commencing with Section 830) of Part 2 of Title 3 of the Penal Code, for use by such officers in the performance of their duties.

(2) Any forestry or fire department of any public agency or fire department organized as provided in the Health and Safety Code.

(c) Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment.

(d) Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Office of Emergency Services or by any public agency or industrial fire department to which the Office of Emergency Services has assigned such vehicle.

(e) Any vehicle owned or operated by any department or agency of the United States government when such vehicle is used in responding to emergency fire, ambulance, or lifesaving calls.

(f) Any vehicle for which an authorized emergency vehicle permit has been issued by the Commissioner of the California Highway Patrol.

SEC. 27. Section 165.3 of the Vehicle Code is repealed.

SEC. 28. Section 165.4 of the Vehicle Code is repealed.

SEC. 29. Section 1808.4 of the Vehicle Code is amended to read:

(f) When any vehicle, except any highway maintenance or construction equipment, is left unattended for more than four hours upon the right-of-way of any freeway which has full control of access and no crossings at grade.

(g) When the person or persons in charge of a vehicle upon a highway are by reason of physical injuries or illness incapacitated to such an extent as to be unable to provide for its custody or removal.

(h) When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is by this code or other law required or permitted to take, and does take, the person arrested before a magistrate without unnecessary delay.

(i) When any vehicle registered in a foreign jurisdiction is found upon a highway and it is known to have been issued five or more notices of parking violation over a period of five or more days, to which the owner or person in control of the vehicle has not responded, the vehicle may be impounded until such person furnishes to the impounding law enforcement agency evidence of his identity and an address within this state at which he can be located and satisfactory evidence that bail has been deposited for all notices of parking violation issued for the vehicle. A notice of parking violation issued to such a vehicle shall be accompanied by a warning that repeated violations may result in the impounding of the vehicle. In lieu of requiring satisfactory evidence that such bail has been deposited, the impounding law enforcement agency may, in its discretion, issue a notice to appear for the offenses charged, as provided in Article 2 (commencing with Section 40500) of Chapter 2 of Division 17. In lieu of either furnishing satisfactory evidence that such bail has been deposited or accepting the notice to appear, such person may demand to be taken without unnecessary delay before a magistrate within the county in which the offenses charged are alleged to have been committed and who has jurisdiction of the offenses and is nearest or most accessible with reference to the place where the vehicle is impounded.

(j) When any vehicle is found illegally parked and there are no license plates or other evidence of registration displayed, the vehicle may be impounded until the owner or person in control of the vehicle furnishes the impounding law enforcement agency evidence of his identity and an address within this state at which he can be located.

(k) When any vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing removal.

(*l*) When any vehicle is illegally parked on a highway in violation of any local ordinance forbidding standing or parking and the use of a highway or a portion thereof is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that such a vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(m) Wherever the use of the highway or any portion thereof is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with such use or movement, and signs giving notice that such a vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(n) Whenever any vehicle is parked or left standing where local authorities by resolution or ordinance have prohibited such parking and have authorized the removal of vehicles. No vehicle may be removed unless signs are posted giving notice of the removal.

SEC. 32. Section 22653 of the Vehicle Code is amended to read:

22653. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, other than an employee directing traffic or enforcing parking laws and regulations, may remove a vehicle from private property located within the territorial limits in which the officer is empowered to act, when a report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been embezzled.

(b) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may, after a reasonable period of time, remove a vehicle from private property located within the territorial limits in which the officer is empowered to act, if the vehicle has been involved in, and left at the scene of, a traffic accident and no owner is available to grant permission to remove the vehicle. This subdivision does not authorize the removal of a vehicle where the owner has been contacted and has refused to grant permission to remove the vehicle.

SEC. 33. Section 22654 of the Vehicle Code is amended to read:

22654. (a) Whenever any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or other employee directing traffic or enforcing parking laws and regulations, finds a vehicle standing upon a highway, located within the territorial limits in which the officer or employee is empowered to act, in violation of Sections 22500 and 22504, the officer or employee may move the vehicle or require the driver or other person in charge of the vehicle to move it to the nearest available position off the roadway or to the nearest parking location, or may remove and store the vehicle if moving it off the roadway to a parking location is impracticable.

(b) Whenever such an officer or employee finds a vehicle standing upon a street, located within the territorial limits in which the officer or employee is empowered to act, in violation of a traffic ordinance enacted by local authorities to prevent flooding of adjacent property, he or she may move the vehicle or require the driver or person in charge of the vehicle to move it to the nearest available location in the vicinity where parking is permitted.

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(c) Any state, county, or city authority charged with the maintenance of any highway may move any vehicle which is disabled or abandoned or which constitutes an obstruction to traffic from the place where it is located on a highway to the nearest available position on the same highway as may be necessary to keep the highway open or safe for public travel. In addition, employees of the Department of Transportation may remove any disabled vehicle which constitutes an obstruction to traffic on a freeway from the place where it is located to the nearest available location where parking is permitted; and if the vehicle is unoccupied, the department shall comply with the notice requirements of subdivision (d) of this section.

(d) Any state, county, or city authority charged with the maintenance or operation of any highway, highway facility, or public works facility, in cases necessitating the prompt performance of any work on or service to such highway, highway facility, or public works facility, may move to the nearest available location where parking is permitted, any unattended vehicle which obstructs or interferes with the performance of such work or service or may remove and store such a vehicle if moving it off the roadway to a location where parking is permitted would be impracticable. If the vehicle is moved to another location where it is not readily visible from its former parked location or it is stored, the person causing such movement or storage of the vehicle shall immediately, by the most expeditious means, notify the owner of the vehicle of its location. If for any reason the vehicle owner cannot be so notified, the person causing the vehicle to be moved or stored shall immediately, by the most expeditious means, notify the police department of the city in which the vehicle was parked, or, if the vehicle had been parked in an unincorporated area of a county, notify the sheriff's department and nearest office of the California Highway Patrol in that county. No vehicle may be removed and stored pursuant to this subdivision unless signs indicating that no person shall stop, park, or leave standing any vehicle within the areas marked by the signs because such work or service would be done, were placed at least 24 hours prior to such movement or removal and storage.

SEC. 34. Section 22655 of the Vehicle Code is amended to read:

22655. (a) When any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, has reasonable cause to believe that a motor vehicle on a highway or on private property open to the general public onto which the public is explicitly or implicitly invited, located within the territorial limits in which the officer is empowered to act, has been involved in a hit-and-run accident, and the operator of the vehicle has failed to stop and comply with the provisions of Sections 20002 to 20006, inclusive, the officer may remove the vehicle from the highway or from public or private property for the purpose of inspection.

(b) Unless sooner released, the vehicle shall be released upon the

expiration of 48 hours after such removal from the highway or private property upon demand of the owner. When determining the 48-hour period, weekends, and holidays shall not be included.

(c) Notwithstanding subdivision (b), when a motor vehicle to be inspected pursuant to subdivision (a) is a commercial vehicle, any cargo within the vehicle may be removed or transferred to another vehicle.

This section shall not be construed to authorize the removal of any vehicle from an enclosed structure on private property which is not open to the general public.

SEC. 35. Section 22656 of the Vehicle Code is amended to read:

22656. Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may remove a vehicle from a railroad right-of-way located within the territorial limits in which the officer is empowered to act if the vehicle is parked upon any railroad track or within 7½ feet of the nearest rail.

SEC. 36. Section 22657.5 of the Vehicle Code is repealed.

SEC. 37. Section 22659 of the Vehicle Code is repealed.

SEC. 38. Section 22702 of the Vehicle Code is amended to read:

22702. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of the state, county, or city designated by an agency or department of the state or the board of supervisors or city council to perform this function, in the territorial limits in which the officer or employee is authorized to act, who has reasonable grounds to believe that the vehicle has been abandoned, may remove the vehicle from a highway or from public or private property.

(b) Any person performing a franchise or contract awarded pursuant to subdivision (a) of Section 22710, may remove a vehicle from a highway or place to which it has been removed pursuant to subdivision (c) of Section 22654 or from public or private property, after a determination by a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or other designated employee of the state, county, or city in which such vehicle is located that such vehicle is abandoned.

(c) The public agency employing the officer shall make an appraisal of any such vehicle either prior to or within five days after removal.

(d) A state, county, or city employee, other than a peace officer or employee of a sheriff's department or city police department, designated to remove vehicles pursuant to this section may do so only after he has mailed or personally delivered a written report identifying the vehicle and its location to the office of the Department of the California Highway Patrol located nearest to the vehicle.

SEC. 38.2. Section 22702 of the Vehicle Code is amended and renumbered to read:

22669. (a) Any peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any other employee of the state, county, or city designated by an agency or department of the state or the board of supervisors or city council to perform this function, in the territorial limits in which the officer or employee is authorized to act who has reasonable grounds to believe that the vehicle has been abandoned, as determined pursuant to Section 22523, may remove the vehicle from a highway or from public or private property.

(b) Any person performing a franchise or contract awarded pursuant to subdivision (a) of Section 22710, may remove a vehicle from a highway or place to which it has been removed pursuant to subdivision (c) of Section 22654 or from public or private property, after a determination by a peace officer, as that term is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or other designated employee of the state, county, or city in which such vehicle is located that such vehicle is abandoned, as determined pursuant to Section 22523.

(c) A state, county, or city employee, other than a peace officer or employee of a sheriff's department or a city police department, designated to remove vehicles pursuant to this section may do so only after he or she has mailed or personally delivered a written report identifying the vehicle and its location to the office of the Department of the California Highway Patrol located nearest to the vehicle.

SEC. 38.5. Section 5008 of the Welfare and Institutions Code is amended to read:

5008. Unless the context otherwise requires, the following definitions shall govern the construction of this part:

(a) "Evaluation" consists of multidisciplinary professional analyses of a person's medical, psychological, educational, social, financial, and legal conditions as may appear to constitute a problem. Persons providing evaluation services shall be properly qualified professionals and may be full-time employees of an agency providing evaluation services or may be part-time employees or may be employed on a contractual basis;

(b) "Court-ordered evaluation" means an evaluation ordered by a superior court pursuant to Article 2 (commencing with Section 5200) or by a court pursuant to Article 3 (commencing with Section 5225) of Chapter 2 of this part;

(c) "Intensive treatment" consists of such hospital and other services as may be indicated. Intensive treatment shall be provided by properly qualified professionals and carried out in facilities qualifying for reimbursement under the California Medical Assistance Program (Medi-Cal) set forth in Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of this code, or under Title XVIII of the federal Social Security Act and regulations thereunder. Intensive treatment may be provided in hospitals of the United States government by properly qualified professionals. Nothing in

this part shall be construed to prohibit an intensive treatment facility from also providing 72-hour treatment and evaluation;

(d) "Referral" is referral of persons by each agency or facility providing intensive treatment or evaluation services to other agencies or individuals. The purpose of referral shall be to provide for continuity of care, and may include, but need not be limited to, informing the person of available services, making appointments on the person's behalf, discussing the person's problem with the agency or individual to which the person has been referred, appraising the outcome of referrals, and arranging for personal escort and transportation when necessary. Referral shall be considered complete when the agency or individual to whom the person has been referred accepts responsibility for providing the necessary services. All persons shall be advised of available precare services which prevent initial recourse to hospital treatment or aftercare services which support adjustment to community living following hospital treatment. Such services may be provided through county welfare departments, State Department of Mental Health, Short-Doyle programs or other local agencies.

Each agency or facility providing evaluation services shall maintain a current and comprehensive file of all community services, both public and private. Such files shall contain current agreements with agencies or individuals accepting referrals, as well as appraisals of the results of past referrals;

(e) "Crisis intervention" consists of an interview or series of interviews within a brief period of time, conducted by qualified professionals, and designed to alleviate personal or family situations which present a serious and imminent threat to the health or stability of the person or the family. The interview or interviews may be conducted in the home of the person or family, or on an inpatient or outpatient basis with such therapy, or other services, as may be appropriate. Crisis intervention may, as appropriate, include suicide prevention, psychiatric, welfare, psychological, legal, or other social services;

(f) "Prepetition screening" is a screening of all petitions for court-ordered evaluation as provided in Article 2 (commencing with Section 5200) of Chapter 2, consisting of a professional review of all petitions; an interview with the petitioner and, whenever possible, the person alleged, as a result of mental disorder, to be a danger to others, or to himself, or to be gravely disabled, to assess the problem and explain the petition; when indicated, efforts to persuade the person to receive, on a voluntary basis, comprehensive evaluation, crisis intervention, referral, and other services specified in this part;

(g) "Conservatorship investigation" means investigation by an agency appointed or designated by the governing body of cases in which conservatorship is recommended pursuant to Chapter 3 (commencing with Section 5350) of this part;

(h) For purposes of Article 1 (commencing with Section 5150), Article 2 (commencing with Section 5200), and Article 4

Assembly Bill No. 488

CHAPTER 803

An act to amend Sections 4497.34 and 13012 of, and to add Section 13010.5 to, the Penal Code, relating to crime, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 1995. Filed with Secretary of State October 13, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 488, Baca. Juvenile justice system.

(1) Existing law specifies procedures under which counties are eligible to receive funding to construct, reconstruct, remodel, or replace juvenile facilities from moneys in the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988. These procedures require the county to enter into a contract with the Department of the Youth Authority and begin construction or renovation work within 4 years of the operative date of the regulations that implement the provisions.

This bill would extend the period in which a county may begin construction or renovation work on juvenile facilities and still be eligible to receive funding under these provisions to within 6 years of the operative date of the regulations that implement the provisions. This bill also would require the Department of the Youth Authority to immediately reallocate unused awards to eligible participating counties, excluding moneys allocated to San Bernardino County.

(2) Existing law requires the Department of Justice to collect data necessary for the work of the department, to process, tabulate, analyze, and interpret the data, to present an annual report to the Governor containing the criminal statistics of the preceding calendar year, and to periodically review the requirements of units of government using criminal justice statistics. The department's annual report is required to contain statistics showing the administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions in dealing with criminals or delinquents.

This bill would expressly require this report to contain statistics showing administrative actions taken by those agencies or institutions in the juvenile justice system. The bill would require the department to collect data pertaining to the juvenile justice system for statistical purposes. The bill would require that this information serve to assist the department in complying with the reporting

requirement described above, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

The bill would appropriate $149,000 from the General Fund to the Department of Justice for the purpose of implementing this program for the 1995–96 fiscal year, and would direct the department thereafter to implement this program using funds appropriated therefor in the Budget Act.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 4497.34 of the Penal Code is amended to read:

4497.34. (a) Counties with overcrowded juvenile facilities shall not be eligible to receive funds to construct, reconstruct, remodel, or replace juvenile facilities unless they have adopted a plan to correct overcrowded conditions within their facilities which includes the use of alternatives to detention. The corrective action plan shall provide for the use of five or more methods or procedures to minimize the number of minors detained and shall be approved by the board of supervisors during or subsequent to a public hearing.

(b) To be eligible for funding under this chapter, the county shall enter into a contract with the Department of the Youth Authority and begin construction or renovation work within six years of the operative date of the regulations that implement this chapter. If a county fails to meet this requirement, any allocations or awards to that county under this chapter shall be deemed void and any moneys allocated or awarded to that county shall revert to the Department of the Youth Authority for reallocation to another county as provided by Section 4497.32. The department may waive this requirement if it determines that there are unavoidable delays in starting construction.

(c) To be eligible for funding for juvenile facilities under the County Correctional Facility Capital Expenditure Bond Act of 1986, the county shall enter into a contract with the Department of the Youth Authority and begin construction or renovation work by July 31, 1991. If a county fails to meet this requirement, all allocations or awards that have been made to that county under that act shall be deemed void and any moneys allocated or awarded to that county shall revert to the Department of the Youth Authority and are reappropriated for reallocation as provided by Section 4497.32. The department may waive this requirement if it determines that there are unavoidable delays in starting construction.

(d) Excluding moneys allocated for San Bernardino County, the Department of the Youth Authority shall immediately reallocate unused awards to eligible participating counties.

SEC. 2. Section 13010.5 is added to the Penal Code, to read:

13010.5. The department shall collect data pertaining to the juvenile justice system for statistical purposes. This information shall serve to assist the department in complying with the reporting requirement of subdivision (c) of Section 13012, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

SEC. 3. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(a) The amount and the types of offenses known to the public authorities.

(b) The personal and social characteristics of criminals and delinquents.

(c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

(d) The number of citizens' complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall include also statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable counties with demonstrated need for relief of overcrowded juvenile facilities to utilize funds that they were entitled to for that purpose, but for inadvertent failure to meet a deadline for entering into a contract and beginning construction, and to enable the Department of Justice to implement the data collection program as expeditiously as possible, it is necessary that this act go into immediate effect.

SEC. 5. (a) The sum of one hundred forty-nine thousand dollars ($149,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of implementing Sections 2 and 3 of this act for the 1995–96 fiscal year.

(b) Thereafter, the Department of Justice shall implement Sections 2 and 3 of this act using funds appropriated in the Budget Act for these purposes.

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Senate Bill No. 314

CHAPTER 468

An act to amend Sections 13010.5 and 13012 of, and to add Section 13012.5 to, the Penal Code, relating to criminal statistics, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

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

I am signing Senate Bill 314, however, I am vetoing Section 4 of the bill which would appropriate $75,000 from the Controller for disbursement to the Department of Justice in order to implement the provisions of this bill.

I believe that the inclusion of statistical data related to minors who are subject to the jurisdiction of an adult criminal court in the Department of Justice's annual report would be beneficial in order to assess the public safety impact and fiscal consequences of trying minors as adults. However, due to the economic situation facing the State, the Department of Justice should fund the implementation of this bill through the $350,000 of federal funding that is available from the Office of Criminal Justice Planning and through existing resources of the Department.

GRAY DAVIS, Governor

LEGISLATIVE COUNSEL'S DIGEST

SB 314, Alpert. Criminal statistics.

Existing law requires the Department of Justice to present a report to the Governor annually containing the criminal statistics of the preceding year, as specified. Existing law also requires the Department of Justice to collect data pertaining to the juvenile justice system.

This bill would require the report to contain statistics on the administrative actions taken by various branches of law enforcement and the criminal justice system in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court, as specified, beginning with the report due on July 1, 2003. This bill would also require that the data collected serve to assist the department in making this report.

This bill would appropriate the sum of $75,000 from the General Fund to the Controller for disbursement to the Department of Justice for the purpose of these provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 13010.5 of the Penal Code is amended to read:

13010.5. The department shall collect data pertaining to the juvenile justice system for statistical purposes. This information shall serve to assist the department in complying with the reporting requirement of subdivisions (c) and (d) of Section 13012, measuring the extent of juvenile delinquency, determining the need for and effectiveness of relevant legislation, and identifying long-term trends in juvenile delinquency.

SEC. 2. Section 13012 of the Penal Code is amended to read:

13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(a) The amount and the types of offenses known to the public authorities.

(b) The personal and social characteristics of criminals and delinquents.

(c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

(d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject of a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

(e) The number of citizens' complaints received by law enforcement agencies under Section 832.5. These statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

It shall be the duty of the department to give adequate interpretation of the statistics and so to present the information that it may be of value in guiding the policies of the Legislature and of those in charge of the apprehension, prosecution, and treatment of the criminals and delinquents, or concerned with the prevention of crime and delinquency. The report shall also include statistics which are comparable with national uniform criminal statistics published by federal bureaus or departments heretofore mentioned.

SEC. 3. Section 13012.5 is added to the Penal Code, to read:

13012.5. (a) The annual report published by the department under Section 13010 shall, in regard to the contents required by subdivision (d) of Section 13012, include the following statewide information:

(1) The annual number of fitness hearings held in the juvenile courts under Section 707 of the Welfare and Institutions Code, and the outcomes of those hearings including orders to remand to adult criminal court, cross-referenced with information about the age, gender, ethnicity, and offense of the minors whose cases are the subject of those fitness hearings.

(2) The annual number of minors whose cases are filed directly in adult criminal court under Sections 602.5 and 707 of the Welfare and Institutions Code, cross-referenced with information about the age, gender, ethnicity, and offense of the minors whose cases are filed directly to the adult criminal court.

(3) The outcomes of cases involving minors who are prosecuted in adult criminal courts, regardless of how adult court jurisdiction was initiated, including whether the minor was acquitted or convicted, or whether the case was dismissed and returned to juvenile court, including sentencing outcomes, cross-referenced with the age, gender, ethnicity, and offense of the minors subject to these court actions.

(b) The department's annual report published under Section 13010 shall include the information described in subdivision (d) of Section 13012, as further delineated by this section, beginning with the report due on July 1, 2003, for the preceding calendar year.

SEC. 4. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the General Fund to the Controller for disbursement to the Department of Justice for the purpose of this act.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the department to collect the information required under these provisions by the reporting deadline, it is necessary for this act to take effect immediately as an urgency statute.

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sion in its proceedings should take into account potential stranded costs for core and noncore customers.

(3) Consider a regulatory scheme that allows both unbundled public utility gas storage service and independent gas storage companies the ability to charge market-based rates.

(4) Give expedited consideration to applications for a certificate of public convenience and necessity filed by independent gas storage companies so as to enable these companies to commence operations at a time reasonably proximate to the initiation of unbundled public utility gas storage service. Further, the commission should take appropriate consideration of the costs and benefits of a competitive gas storage market in making determinations of the public convenience and necessity in these cases.

(5) Ensure that costs borne by core customers as a result of these storage proceedings are commensurate with the benefits that core customers receive.

(e) The Public Utilities Commission is requested to report to both houses of the Legislature no later than July 1, 1993, explaining what steps the commission has taken to foster the development of a competitive natural gas storage market, including, but not limited to, a description of all commission orders, decision, rules, or regulations affecting the unbundling of public utility gas storage services, the rates charged for these services, and the amount of such services utilized by customers. In addition, the commission is requested in the report to describe the actions it has taken in connection with the development of independent gas storage companies, including, but not limited to, the issuance of certificates of public convenience and necessity, the approval of transportation tariffs, and orders providing for the interconnection of these independent gas storage facilities with the facilities of existing public utilities.

SEC. 2. Notwithstanding any other provision of law, the Director of Finance may authorize transfers from reserve funds in the Transportation Rate Fund (Section 5005, Public Utilities Code), Public Utilities Commission Utilities Reimbursement Account (Section 402, Public Utilities Code), or the Public Utilities Commission Transportation Reimbursement Account (Section 403, Public Utilities Code) for support of the Public Utilities Commission. The total of all transfers pursuant to this section shall not exceed five million dollars ($5,000,000).

CRIMES—SEXUAL HABITUAL OFFENDERS—DEPARTMENT OF JUSTICE

CHAPTER 1338

S.B. No. 1184

AN ACT to amend Sections 290.3 and 11170 of, to add Section 13014 to, and to add Chapter 9.5 (commencing with Section 13885) to Title 6 of Part 4 of, the Penal Code, relating to sexual habitual offenders.

[Approved by Governor September 30, 1992.]

[Filed with Secretary of State September 30, 1992.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1184, Presley. Sexual habitual offenders.

(1) Existing law defines murder as the unlawful killing of a human being or a fetus with malice aforethought. Existing law also provides for 1st degree and 2nd degree murder.

This bill would direct the Department of Justice to do all of the following within its existing budget:

(a) Collect specified information on all persons who are the victims of, and all persons who are charged with, the crime of murder.

(b) Adopt and distribute to all state and governmental entities that are responsible for the investigation and prosecution of murder cases forms which will include information provided to the department pursuant to (2) below.

(c) Compile, collate, index, and maintain a file of the information required by (2) below, which would be made available to the general public during the normal business hours of the department.

(2) In addition, the bill would require every state or local governmental entity responsible for the investigation and prosecution of a homicide case to provide the department, on forms specified above, with specified demographic information about the victim and the person or persons charged with the crime. Because these provisions would increase the responsibilities of local governmental entities, the bill would impose a state-mandated local program.

(3) Existing law requires persons convicted of specified sex offenses who are required to register, in addition to any imprisonment or fine, or both, to pay an additional fine, as specified, unless the court determines that the defendant does not have the ability to pay the fine. Existing law also requires that an amount equal to the moneys deposited with the county treasurer under this provision be transferred to the Controller for deposit in the General Fund, to be used, upon appropriation by the Legislature, for the purposes of provisions relating to the Serious Habitual Offender Program pilot project authorized in specified counties mentioned in (6) below.

This bill would require, instead, that the moneys be used for the purposes of a statewide Sexual Habitual Offender Program proposed by this bill.

(4) Existing law, the Child Abuse and Neglect Reporting Act, requires the Department of Justice to maintain an index of all reports of child abuse submitted, as specified, to be updated continually. Existing law also requires the department to make information from the index concerning, among others, applicants for licensure or any adult who resides or is employed in a home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children available to the State Department of Social Services or to any county licensing agency which has contracted with the state, as specified.

This bill would provide, commencing January 1, 1993, that whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to this provision, the Department of Justice may charge the person or entity making the request a fee not to exceed the reasonable costs to the department of providing the information, not to be increased, except as specified, and in no case to exceed $15.

(5) Existing law requires specified sex offenders who are required to register, prior to discharge or parole from the state prison, a county jail, or specified institutions, or prior to the granting of probation or release, to submit specimens of blood and saliva samples. Existing law also requires the Department of Justice to perform DNA and other genetic typing analysis of these blood specimens and saliva samples for law enforcement purposes.

This bill would provide that the above-mentioned fee that this bill would authorize the Department of Justice to charge a person making a request for information would fund the DNA offender identification file authorized by this provision.

(6) Existing law authorizes the Serious Habitual Offender Program pilot project for 5 years in the Counties of San Francisco, San Mateo, Santa Clara, Santa Cruz, Alameda, Contra Costa, Napa, Sonoma, Solano, and Marin for the purpose of evaluating the number of arrests and convictions for sex offenses and the length of sentences for repeat offenders. The project becomes inoperative on July 1, 1994, and related provisions are to be repealed on January 1, 1995.

This bill would authorize a similar statewide Sexual Habitual Offender Program. To the extent that local counties will be required to furnish copies of existing information maintained in their files regarding persons identified by the Department of Justice as serious habitual sex offenders and provide followup information, this bill would impose a state-mandated local program.

(7) This bill would incorporate additional changes in Section 11170 of the Penal Code, proposed by AB 92, to be operative only if AB 92 and this bill are both chaptered and become effective January 1, 1993, and this bill is chaptered last.

(8) 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 which 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 this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

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

SECTION 1. Section 290.3 of the Penal Code is amended to read:

290.3. Every person convicted of a violation of any offense listed in subdivision (a) of Section 290 * * *, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, shall be punished by a fine of one hundred dollars ($100) upon the first conviction or a fine of two hundred dollars ($200) upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

Out of the moneys deposited with the county treasurer pursuant to this section, there shall be transferred, once a month, to the Controller for deposit in the General Fund, an amount equal to all fines collected during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense listed in Section 290. Moneys deposited in the General Fund pursuant to this section shall be deposited in the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 and, when appropriated by the Legislature * * *, shall be used for the purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

SEC. 2. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency which submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) which is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency * * *, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency which has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or

children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section 222.70, 224.30, 226.52, or 227.10 of the Civil Code. If the department has information that has been received subsequent to January 1, 1981, concerning such a person, it also shall make available to the State Department of Social Services or to the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(5) Effective January 1, 1998, whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All moneys received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and Section 290.2, and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5. (commencing with Section 13885) of Title 6 of Part 4 and Section 290.2.

SEC. 2.5. Section 11170 of the Penal Code is amended to read:

11170. (a) The Department of Justice shall maintain an index of all reports of child abuse submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded or that have been destroyed under Section 11169. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(b) (1) The Department of Justice shall immediately notify a child protective agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse reported by the agency. A child protective agency shall make that information available to the reporting medical practitioner, child custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318, of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse.

(2) When a report is made pursuant to subdivision (a) of Section 11166, the investigating agency * * *, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties any information received subsequent to January 1, 1981, pursuant to this section concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24-hour care for a child or children in a residential home or facility, pursuant to Section 1522.1 or 1596.877 of the Health and Safety Code, or Section

* * * 8714, 8802, 8912, or 9000 of the Family Code. If the department has information that has been received subsequent to January 1, 1981, concerning such a person, it also shall make available to the State Department of Social Services or to the county licensing agency any other information maintained pursuant to subdivision (a).

(4) Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, or licensing.

(5) Effective January 1, 1993, whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing pursuant to paragraph (3), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

All the moneys received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and Section 290.2, and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Part 6 of Part 4 and Section 290.2.

(c) Whenever a report of suspected child abuse names a school employee and forms the basis for disciplinary action of the employee by the school employer, the school or school district, subject to Section 44031 of the Education Code or any applicable agreement adopted pursuant to Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, may maintain customary records regarding the alleged incident. However, under no circumstances shall the report of suspected child abuse itself be retained in a school employee's personnel file.

SEC. 3. Section 13014 is added to the Penal Code, to read:

13014. (a) The Department of Justice shall perform the following duties concerning the investigation and prosecution of homicide cases:

(1) Collect information, as specified in subdivision (b), on all persons who are the victims of, and all persons who are charged with, homicide.

(2) Adopt and distribute to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms which will include information to be provided to the department pursuant to subdivision (b).

(3) Compile, collate, index, and maintain a file of the information required by subdivision (b). The file shall be available to the general public during the normal business hours of the department, and the department shall annually publish a report containing the information required by this section, which shall also be available to the general public.

The department shall perform the duties specified in this subdivision within its existing budget.

(b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background.

SEC. 4. Chapter 9.5 (commencing with Section 13885) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 9.5. STATEWIDE SEXUAL HABITUAL OFFENDER PROGRAM

13885. The Legislature hereby finds that a substantial and disproportionate amount of sexual offenses are committed against the people of California by a relatively small number of multiple and repeat sex offenders. In enacting this chapter, the Legislature intends to support efforts of the criminal justice community through a focused effort by law enforcement and prosecuting agencies to identify, locate, apprehend, and prosecute sexual habitual offenders.

13885.2. The Attorney General, subject to the availability of funds, shall establish in the Department of Justice the Sexual Habitual Offender Program, which is hereby created, which shall evaluate the number of arrests and convictions for sex offenses and the length of sentences for repeat offenders. This shall be a statewide program.

It is the intent of the Legislature that this statewide program shall not affect the operation of the Serious Habitual Offender Program authorized by Chapter 10 (commencing with Section 13890) involving the Counties of San Francisco, San Mateo, Santa Clara, Santa Cruz, Alameda, Contra Costa, Napa, Sonoma, Solano, and Marin which shall become inoperative on July 1, 1994.

13885.4. As used in this chapter, "sexual habitual offenders" means those persons who have been either of the following:

(a) Convicted of two or more violent offenses against a person involving force or violence which include at least one sex offense.

(b) Convicted of an offense listed in Section 290 and also meet one of the following criteria:

(1) Have three or more felony arrests for sex offenses specified in Section 290 on their criminal record.

(2) Have five or more felony arrests for any type of offense on their criminal record.

(3) Have 10 or more arrests, either felony or misdemeanor, for any type of offense on their criminal record.

(4) Have five or more arrests, either felony or misdemeanor, for any type of offense, including either of the following:

(A) At least one conviction for multiple sex offenses which shall mean a conviction arising from the commission of two or more offenses listed in subdivision (a) of Section 290 in one transaction.

(B) At least two arrests for a single sex offense listed in subdivision (a) of Section 290.

13885.6. The Department of Justice shall establish and maintain a comprehensive file of existing information maintained by law enforcement agencies, the Department of Corrections, the Department of Motor Vehicles, and the Department of Justice. The Department of Justice may request the Department of Corrections, the Department of Motor Vehicles, and law enforcement agencies to provide existing information from their files regarding persons identified as sexual habitual offenders. The Department of Corrections, the Department of Motor Vehicles, and law enforcement agencies, when requested by the Department of Justice, shall provide copies of existing information maintained in their files regarding persons identified by the Department of Justice as sexual habitual offenders and shall provide followup information to the Department of Justice as it becomes available. This sexual habitual offender file shall be maintained by the Department of Justice and shall contain a complete physical description and method of operation of the sexual habitual offender, information describing his or her interaction with criminal justice agencies, and his or her prior criminal record. The Department of Justice also shall prepare a summary profile of each sexual habitual offender for distribution to law enforcement agencies.

13885.8. The Department of Justice shall provide a summary profile of each sexual habitual offender to each law enforcement agency when the individual registers in, or moves to, the area in which the law enforcement agency is located.

CHAPTER 1609

An act to add Section 13519 to, and to add and repeal Title 5 (commencing with Section 13700) to Part 4 of, the Penal Code, relating to training of peace officers, and making an appropriation therefor.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

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

SECTION 1. The Legislature finds and declares that:

(a) A significant number of homicides, aggravated assaults, and assaults and batteries occur within the home between adult members of families. Research shows that 35 to 40 percent of all assaults are related to domestic violence.

(b) The reported incidence of domestic violence represents only a portion of the total number of incidents of domestic violence.

(c) Twenty-three percent of the deaths of law enforcement officers in the line of duty results from intervention by law enforcement officers in incidents of domestic violence.

(d) Domestic violence is a complex problem affecting families from all social and economic backgrounds.

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is not the intent of the Legislature to remove a peace officer's individual discretion where that discretion is necessary, nor is it the intent of the Legislature to hold individual peace officers liable.

SEC. 2. Section 13519 is added to the Penal Code, to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any

shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Forty thousand dollars ($40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.

SEC. 3. Title 5 (commencing with Section 13700) is added to Part 4 of the Penal Code, to read:

TITLE 5. LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

CHAPTER 1. GENERAL PROVISIONS

13700. As used in this title:

(a) "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 himself, or another.

(b) "Domestic Violence" is abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or has or has had a dating or engagement relationship.

(c) "Officer" means any law enforcement officer employed by a local police department or sheriff's office, consistent with Section 830.1.

(d) "Victim" means a person who is a victim of domestic violence.

13701. Every law enforcement agency in the this state shall develop, adopt, and implement written policies and standards for officers' response to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred. These

ompiled by each law enforcement agency and submitted to the Attorney General.

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

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

CHAPTER 5. TERMINATION

13731. This title shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 4. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the General Fund to the Department of Justice for the purposes of Section 13730 of the Penal Code.

SEC. 5. 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 hapter 3 (commencing with Section 2201) of Part 4 of Division 1 that code.

CHAPTER 1610

An act to add Section 14132.6 to the Welfare and Institutions Code, relating to mastectomy.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

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

SECTION 1. The Legislature finds and declares that breast reconstruction incident to mastectomy is not cosmetic surgery. It is surgical restoration of a part of the body that has been lost through severe illness by no fault of the patient, and restoration shall, therefore, be considered part of the original mastectomy surgery.

SEC. 2. Section 14132.6 is added to the Welfare and Institutions Code, to read:

14132.6. External prostheses constructed of silicon or other

BILL NUMBER: AB 2250 CHAPTERED 10/11/93
BILL TEXT

CHAPTER 1230
FILED WITH SECRETARY OF STATE OCTOBER 11, 1993
APPROVED BY GOVERNOR OCTOBER 11, 1993
PASSED THE SENATE SEPTEMBER 10, 1993
PASSED THE ASSEMBLY SEPTEMBER 10, 1993
AMENDED IN SENATE SEPTEMBER 8, 1993
AMENDED IN SENATE AUGUST 17, 1993
AMENDED IN SENATE JULY 16, 1993
AMENDED IN ASSEMBLY MAY 11, 1993

INTRODUCED BY Assembly Members Speier and Collins

MARCH 5, 1993

An act to amend Sections 13700 and 13730 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2250, Speier. Domestic violence.

Existing law requires every law enforcement agency to develop, adopt, and implement written policies and standards for officers' response to domestic violence calls, as specified, maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, as specified, and develop a system for recording all domestic violence-related calls for assistance made to the Department of Justice. Existing law also requires each law enforcement agency to develop an incident report form that includes a domestic violence identification code, as specified.

This bill would require that domestic violence-related calls for assistance, for the purposes of these provisions, be supported with the written incident report form developed under the above provisions, identifying the domestic violence incident.

Existing law defines "domestic violence" for this purpose as abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

This bill would redefine "domestic violence" for this

purpose, as abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, specified cohabitant, or former cohabitant in the case of adults, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, thereby imposing a state-mandated local program by expanding the scope of the duties of local law enforcement with regard to recording and providing written incident reports on domestic violence-related calls.

This bill would incorporate additional changes in Section 13700 of the Penal Code proposed by AB 224, to be operative only if AB 224 and this bill are both chaptered and become effective January 1, 1994, and this bill is chaptered last.

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 which 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 this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) "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 himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are

cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, or any peace officer of the California State University Police Department, as defined in subdivision (d) of Section 830.2.

(d) "Victim" means a person who is a victim of domestic violence.

SEC. 1.5. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) "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 himself or herself, or another.

(b) "Domestic violence" means abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the California Highway Patrol, the California State Police, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, or a housing authority patrol officer, as defined in subdivision (d) of Section 830.31.

(d) "Victim" means a person who is a victim of domestic

violence.

SEC. 2. 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 violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 13700 of the Penal Code proposed by both this bill and AB 224. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1994, (2) each bill amends Section 13700 of the Penal Code, and (3) this bill is enacted after AB 224, in which case Section 1 of this bill shall not become operative.

SEC. 4. 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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Senate Bill No. 132

CHAPTER 965

An act to amend Sections 13519 and 13730 of the Penal Code, relating to domestic violence.

[Approved by Governor October 16, 1995. Filed with Secretary of State October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 132, Watson. Domestic violence.

(1) Under existing law, the Commission on Peace Officer Standards and Training is required to implement a course or courses of instruction for the training of law enforcement officers in the handling of domestic violence complaints. The course of instruction is required to be developed by the commission in consultation with specified groups and individuals.

This bill would require each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence to complete, every 2 years, an updated course of instruction on domestic violence. This instruction would be funded from existing resources.

Existing law requires each law enforcement agency to develop an incident report form that includes a domestic violence identification code and requires a report to be written in all incidents of domestic violence.

This bill would specify certain information to be included in a domestic violence incident report.

(2) 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 impose a state-mandated local program by imposing new duties on peace officers.

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 13519 of the Penal Code is amended to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (d) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

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

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, reportwriting, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

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

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least

one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.

SEC. 2. 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 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 had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

Assembly Bill No. 469

CHAPTER 483

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 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.

The cancer so developing or manifesting itself in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1172

An act to add Section 13023 to the Penal Code, relating to criminal records.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 13023 is added to the Penal Code, to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, such information as may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

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. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1173

An act to add Section 56111.1 to the Government Code, and to amend Section 99231 of the Public Utilities Code, relating to local government.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989.]

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

SECTION 1. Section 56111.1 is added to the Government Code, to read:

56111.1. (a) Notwithstanding Section 56110, upon approval of the commission, the City of Soledad may annex noncontiguous territory of not more than 1,000 acres in area, located in the County of Monterey and which constitutes a state correctional training facility. If, after the completion of the annexation, the State of California sells that territory or any part thereof, all of that territory which is no longer owned by the state shall cease to be a part of the City of Soledad.

(b) If territory is annexed pursuant to this section, the city may not annex any territory not owned by the State of California and not contiguous to the city although that territory is contiguous to the territory annexed pursuant to this section.

(c) When territory ceases to be part of the city pursuant to this section, the legislative body of the city shall adopt a resolution confirming the detachment of that territory from the city. The resolution shall describe the detached territory and shall be accompanied by a map indicating the territory. Immediately upon adoption of the resolution, the city clerk shall make any filing provided for by Chapter 8 (commencing with Section 57200) of Part 4 of Division 3.

(d) If territory annexed to the City of Soledad pursuant to this section becomes contiguous to the city, the limitations imposed by this section shall cease to apply.

(e) The City of Soledad may enter into an agreement with any

Assembly Bill No. 1999

CHAPTER 933

An act to amend Sections 186.21, 422.75, 11410, 13023, and 13519.6 of, and to add Section 422.76 to, the Penal Code, relating to gender.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 28, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1999, Kuehl. Hate crimes: gender.

(1) Existing law punishes as a misdemeanor, a person who uses force or threat of force to willfully injure, intimidate, interfere with, oppress, or threaten any person in the free exercise or enjoyment of a right or privilege because of that person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation. Similarly, existing law imposes an enhanced penalty on a person who, while acting in concert with another person, commits or attempts to commit a felony because of the victim's membership in one or more of the above specified groups. An enhanced penalty is also imposed on any person who commits or attempts to commit a felony against the property of a public agency or private institution because the property is identified or associated with a person who is a member of, or a group that is included within, one of the groups specified above. Additionally, existing law imposes enhanced penalties on a person who commits or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, or sexual orientation, and on a person for each prior felony conviction committed because of the victim's membership in any of the groups just specified.

This bill would amend the last 2 provisions summarized above, and an intent section of an act relating to the prevention of street terrorism, by adding gender to the list of groups in which the victim's membership entitles the victim to protection under those statutes. This bill would also define "gender" for purposes of the provisions summarized in this digest and other specified provisions, to mean the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity or appearance, whether or not that identity or appearance is different from that traditionally associated with the victim's sex at birth. By expanding the definition of an enhancement, this bill would impose a state-mandated local program. The bill would state that this definition section does not constitute a change in, but is declaratory of, existing law.

(2) Existing law expresses the Legislature's intent that every person regardless of race, color, creed, religion, or national origin, has the right to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.

This bill would add a person's gender to the above list of characteristics that are protected by law.

(3) Existing law requires the Attorney General to direct local law enforcement agencies to report to the Department of Justice, information regarding physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability.

This bill would add gender to the list of victim characteristics in the above reporting provision. By increasing the reporting duties of local officials, this bill would impose a state-mandated local program.

(4) This bill would incorporate additional changes in Section 422.75 of the Penal Code proposed by SB 2168, to be operative if SB 2168 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

(5) This bill would incorporate a cross reference to Section 190.03 of the Penal Code that would be added by AB 2324, to be operative only if both this bill and AB 2324 are enacted and become operative on or before January 1, 1999, and AB 2324 adds Section 190.03 to the Penal Code.

(6) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. Section 186.21 of the Penal Code is amended to read:

186.21. The Legislature hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the

intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Legislature hereby recognizes the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to lawfully associate with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

The Legislature, however, further finds that the State of California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety and are not constitutionally protected. The Legislature finds that there are nearly 600 criminal street gangs operating in California, and that the number of gang-related murders is increasing. The Legislature also finds that in Los Angeles County alone there were 328 gang-related murders in 1986, and that gang homicides in 1987 have increased 80 percent over 1986. It is the intent of the Legislature in enacting this chapter to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs, which together, are the chief source of terror created by street gangs. The Legislature further finds that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

SEC. 2. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5 or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) (1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman) (1995) 10 Cal. 4th 735.

SEC. 2.5. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony or attempts to commit a felony because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because

he or she perceives that the victim has one or more of those characteristics, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(c) Except in the case of a person punished under Section 422.7 or subdivision (a) or (b) of this section, any person who commits a felony, or attempts to commit a felony, because of the victim's race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(d) For the purpose of imposing an additional term under subdivision (a) or (c), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.5, 12022.53, or 12022.55, or any other law.

(e) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was committed because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or that the crime was committed because the defendant perceived that the victim had one or more of those characteristics. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(f) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(g) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(h) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) (1) "Because of" means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman)(1995) 10 Cal. 4th 735.

SEC. 3. Section 422.76 is added to the Penal Code, to read:

422.76. For purposes of Section 186.21, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

SEC. 3.1. Section 422.76 is added to the Penal Code, to read:

422.76. For purposes of Sections 186.21, 190.03, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (c) of Section 13519.4, and subdivision (a) of Section 13519.6, "gender" means the victim's actual sex or the defendant's perception of the victim's sex, and includes the defendant's perception of the victim's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim's sex at birth.

SEC. 4. Section 11410 of the Penal Code is amended to read:

11410. The Legislature finds and declares that it is the right of every person regardless of race, color, creed, religion, gender, or national origin, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of rights protected by the Constitution of the United States. The Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to associate with others who share similar beliefs. The Legislature further finds however, that the advocacy of unlawful violent acts by groups against other persons or groups under circumstances where death or great bodily injury is likely to result is not constitutionally

protected, poses a threat to public order and safety and should be subject to criminal and civil sanctions.

SEC. 5. Section 13023 of the Penal Code is amended to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 6. Section 13519.6 of the Penal Code is amended to read:

13519.6. (a) The commission shall, on or before December 31, 1993, develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. "Hate crimes," for purposes of this section, means any act of intimidation, harassment, physical force, or the threat of physical force directed against any person, or family, or their property or advocate, motivated either in whole or in part by the hostility to the real or perceived ethnic background, national origin, religious belief, gender, age, disability, or sexual orientation, with the intention of causing fear and intimidation.

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following procedures and techniques:

(1) Indicators of hate crimes.

(2) The impact of these crimes on the victim, the victim's family, and the community.

(3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.

(4) Law enforcement procedures, reporting, and documentation of hate crimes.

(5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b).

(d) The course of training leading to the basic certificate issued by the commission shall, not later than July 1, 1994, include the course of instruction described in subdivision (a).

(e) As used in this section, "peace officer" means any person designated as a peace officer by Section 830.1 or 830.2.

SEC. 7. Section 422.76 of the Penal Code as added by Section 3 of this act does not constitute a change in, but is declaratory of, existing law.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 422.75 of the Penal Code proposed by both this bill and SB 2168. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 422.75 of the Penal Code, and (3) this bill is enacted after SB 2168, in which case Section 422.75 of the Penal Code as amended by SB 2168, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 9. Section 3.1 of this bill shall become operative only if (1) both this bill and AB 2324 are enacted and become effective on or before January 1, 1999, and (2) AB 2324 adds Section 190.03 to the Penal Code, in which case Section 3 of this bill shall not become operative.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

Assembly Bill No. 715

CHAPTER 626

An act to amend Sections 12512, 12520, and 12544 of the Government Code, and to amend Section 13023 of the Penal Code, relating to the Attorney General.

[Approved by Governor September 24, 2000. Filed with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 715, Firebaugh. Attorney General duties: criminal information reporting.

(1) Existing law requires the Attorney General to prosecute and defend all causes to which the state or state officers in their official capacities are parties, as well as all causes to which any county is a party, unless the interest of the county is adverse to the state or state officers in their official capacities.

This bill would repeal the above-described provisions regarding the prosecution and defense of causes to which any county is a party.

(2) Existing law prohibits the Attorney General from employing special counsel, except when those cases concern escheated property and the supervision of district attorneys.

This bill would provide that this prohibition does not affect the right of the Attorney General to employ counsel to represent or assist in the representation of a state agency, as defined, or a state employee if the representation meets specified standards.

(3) Existing law provides that, if an escheat proceeding is prosecuted by the regular staff of the Attorney General's office, the Attorney General shall recover the costs and charges of commencing and filing a suit to recover escheated property from the escheated funds, by presenting a claim.

This bill would repeal the requirement that the action be prosecuted by the regular staff of the Attorney General's office, and make other technical changes.

(4) Existing law requires the Attorney General to direct local law enforcement agencies to report to the Department of Justice, information that may be required relative to criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability.

This bill would add national origin to the list of victim characteristics in this reporting requirement. By increasing the

reporting duties of local officials, this bill would impose a state-mandated local program.

(5) 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 12512 of the Government Code is amended to read:

12512. The Attorney General shall attend the Supreme Court and prosecute or defend all causes to which the State, or any State officer is a party in his or her official capacity.

SEC. 2. Section 12520 of the Government Code is amended to read:

12520. (a) The Attorney General may not employ special counsel in any case except pursuant to either of the following:

(1) Article 3 (commencing with Section 12540).

(2) Article 4 (commencing with Section 12550).

(b) Subdivision (a) does not affect the right of the Attorney General to employ counsel to represent, or to assist in the representation of, a state agency as defined in Section 11000, including the Attorney General or the Department of Justice, or to represent a state employee if that representation meets any of the standards set forth in paragraph (3), (5), (7), (8), (9), or (10) of subdivision (b) of Section 19130.

SEC. 3. Section 12544 of the Government Code is amended to read:

12544. If an escheat proceeding is prosecuted by the staff of the Attorney General's office, the Attorney General shall recover, by presenting a claim to the Controller, all costs and charges of commencing and prosecuting the suit, from the funds so escheated. Those claims shall be paid from the Abandoned Property Account in the Unclaimed Property Fund and credited to and in augmentation of any support appropriation of the Attorney General. The costs and charges may not in any case exceed 10 per cent of the sum or sums actually escheated to the State in those suits.

SEC. 4. Section 13023 of the Penal Code is amended to read:

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

SEC. 5. 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.

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Assembly Bill No. 491

CHAPTER 571

An act to amend Sections 11106, 12025, and 12031 of the Penal Code, relating to firearms.

[Approved by Governor September 28, 1999. Filed with Secretary of State September 29, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 491, Scott. Firearms.

(1) Existing law requires the Attorney General to maintain a registry of specified information concerning pistols, revolvers, and other firearms capable of being concealed on the person and to include in the registry specified data provided to the Department of Justice on the Dealers' Record of Sale.

This bill would require the Attorney General, at the written request of any person listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, to store and keep that record electronically and to provide the person written notice of its compliance with the request.

This bill would also incorporate additional changes in Section 11106 of the Penal Code proposed by SB 29, to be operative only if that bill and this bill are enacted and become effective on or before January 1, 2000, and this bill is enacted last.

(2) Existing law generally provides that it is a misdemeanor for any person to carry a concealed firearm. Under specified circumstances, carrying a concealed firearm is punishable as a felony. One of these circumstances includes a person who is not in lawful possession of the firearm. "Lawful possession" is defined to mean a person who owns the firearm or has permission of the owner or a person with apparent authority.

This bill would punish as a misdemeanor or a felony, carrying a concealed firearm if both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person or are readily accessible, or the firearm is loaded, as defined by law, where the person in possession is not the registered owner of the firearm, as specified. This bill would allow a peace officer to arrest a person for violating this provision if the officer had probable cause to believe the person was not the registered owner of the firearm and the other elements of this offense exist. The bill would also redefine the term "lawful possession" to mean one who lawfully owns or has permission of the lawful owner. In addition, the bill would require the district attorney of each county

to submit an annual report to the Attorney General consisting of profiles of persons charged with felonies or misdemeanors under this concealable firearm provision. Under the bill, the Attorney General would be required to submit an annual report to the Legislature compiling all of the reports submitted by the district attorneys. By increasing the punishment for a crime and increasing the duties of local officials, this bill would impose a state-mandated local program.

(3) Existing law provides that every person who carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street, as specified, is guilty of a misdemeanor except in specified circumstances where this offense is punishable as a felony.

This bill would punish as a misdemeanor or a felony, possession of a loaded pistol, revolver, or other firearm capable of being concealed upon the person where the person in possession is not the registered owner of the firearm, as specified. The bill would allow a peace officer to arrest a person for violating this provision if the officer had probable cause to believe the person was not the registered owner of the firearms and the other elements of this offense exist. The bill would also incorporate in this provision the changes described in (2) above regarding the definition of "lawful possession" and the requirement imposed upon the district attorney.

(4) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12072 or 12078, forms provided pursuant to

Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105 or to the person listed in the registry as the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

SEC. 1.5. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen,

or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12072 or 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the

Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Dealers' Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person and when the firearm was acquired or loaned as listed on the information provided to the department on the Dealers' Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(E) Information provided pursuant to paragraphs (19) and (20) of subdivision (b) of Section 12071.

(F) Information provided pursuant to paragraph (8) of subdivision (d) of Section 12084.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105 or to the person listed in the registry as the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

(4) If any person is listed in the registry as the owner of a firearm through a Dealers' Record of Sale prior to 1979, and the person listed in the registry requests by letter that the Attorney General store and keep the record electronically, as well as in the record's existing

photographic, photostatic, or nonerasable optically stored form, the Attorney General shall do so within three working days of receipt of the request. The Attorney General shall, in writing, and as soon as practicable, notify the person requesting electronic storage of the record that the request has been honored as required by this paragraph.

SEC. 2. Section 12025 of the Penal Code is amended to read:

12025. (a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) By imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment if both of the following conditions are met:

(A) Both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are either in the immediate possession of the person or readily accessible to that person, or the pistol, revolver, or other firearm capable of being

concealed upon the person is loaded as defined in subdivision (g) of Section 12031.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106, as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (b) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (b) is met.

(d) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 12001.6 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by this chapter, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(g) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully owns the firearm or has the permission of the lawful owner or a person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a

person who has lawful custody of the firearm does not have lawful possession of the firearm.

(h) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

SEC. 3. Section 12031 of the Penal Code is amended to read:

12031. (a) (1) A person is guilty of carrying a loaded firearm when he or she carries a loaded firearm on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(2) Carrying a loaded firearm in violation of this section is punishable, as follows:

(A) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony.

(B) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(C) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(D) Where the person is not in lawful possession of the firearm, as defined in this section, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(E) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(F) Where the person is not listed with the Department of Justice pursuant to Section 11106, as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or both that fine and imprisonment.

(G) In all cases other than those specified in subparagraphs (A) to (F), inclusive, as a misdemeanor, punishable by imprisonment in

a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(3) For purposes of this section, "lawful possession of the firearm" means that the person who has possession or custody of the firearm either lawfully acquired and lawfully owns the firearm or has the permission of the lawful owner or person who otherwise has apparent authority to possess or have custody of the firearm. A person who takes a firearm without the permission of the lawful owner or without the permission of a person who has lawful custody of the firearm does not have lawful possession of the firearm.

(4) Nothing in this section shall preclude prosecution under Sections 12021 and 12021.1 of this code, Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(5) (A) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(i) When the person arrested has violated this section, although not in the officer's presence.

(ii) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(B) A peace officer may arrest a person for a violation of subparagraph (F) of paragraph (2), if the peace officer has probable cause to believe that the person is carrying a loaded pistol, revolver, or other firearm capable of being concealed upon the person in violation of this section and that person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(6) (A) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 12001.6, or of any crime made punishable under this chapter, shall serve a term of at least three months in a county jail, or, if granted probation or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned for a period of at least three months.

(B) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this subdivision, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(7) A violation of this section which is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(b) Subdivision (a) shall not apply to any of the following:

(1) Peace officers listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, whether active or honorably retired, other duly appointed peace officers, honorably retired peace officers listed in subdivision (c) of Section 830.5, other honorably retired peace officers who during the course and scope of their employment as peace officers were authorized to, and did, carry firearms, full-time paid peace officers of other states and the federal government who are carrying out official duties while in California, or any person summoned by any of those officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer. Any peace officer described in this paragraph who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired. The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3).

Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

No endorsement or renewal endorsement issued pursuant to paragraph (2) shall be effective unless it is in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027, except that any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this section, shall not be required to have an endorsement in the format set forth in subparagraph (D) of paragraph (1) of subdivision (a) of Section 12027 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to paragraph (2).

(2) A retired peace officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of his or her privilege to carry a loaded firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry

a loaded firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke for good cause the retired officer's privilege to carry a loaded firearm. A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have his or her privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer's identification certificate "No CCW privilege."

(3) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

(4) Members of the military forces of this state or of the United States engaged in the performance of their duties.

(5) Persons who are using target ranges for the purpose of practice shooting with a firearm or who are members of shooting clubs while hunting on the premises of those clubs.

(6) The carrying of pistols, revolvers, or other firearms capable of being concealed upon the person by persons who are authorized to carry those weapons pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4.

(7) Armored vehicle guards, as defined in Section 7521 of the Business and Professions Code, (A) if hired prior to January 1, 1977, or (B) if hired on or after that date, if they have received a firearms qualification card from the Department of Consumer Affairs, in each case while acting within the course and scope of their employment.

(8) Upon approval of the sheriff of the county in which they reside, honorably retired federal officers or agents of federal law enforcement agencies, including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and officers or agents of the Internal Revenue Service who were authorized to carry weapons while on duty, who were assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

Retired federal officers or agents shall provide the sheriff with certification from the agency from which they retired certifying their service in the state, the nature of their retirement, and indicating the

agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that he or she may carry a loaded firearm in accordance with this paragraph. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

(c) Subdivision (a) shall not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(1) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, (A) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (B) are not less than 18 years of age or more than 40 years of age, (C) possess physical qualifications prescribed by the commission, and (D) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(2) The carrying of weapons by animal control officers or zookeepers, regularly compensated as such by a governmental agency when acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons, or by persons who are authorized to carry the weapons pursuant to Section 14502 of the Corporations Code, while actually engaged in the performance of their duties pursuant to that section.

(3) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

(d) Subdivision (a) shall not apply to any of the following who have been issued a certificate pursuant to Section 12033. The certificate shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of his or her power as a peace officer, and who is employed while not on duty as a peace officer.

(1) Guards or messengers of common carriers, banks, and other financial institutions while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities

Commission authority (A) if hired prior to January 1, 1977, or (B) if hired on or after January 1, 1977, if they have completed a course in the carrying and use of firearms which meets the standards prescribed by the Department of Consumer Affairs.

(3) Private investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of, and alarm company operators who are licensed pursuant to Chapter 11.6 (commencing with Section 7590) of, Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(4) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment.

(5) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers or on duty or en route to or from their residences or their places of employment, and security guards and alarm agents en route to or from their residences or employer-required range training. Nothing in this paragraph shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(6) Uniformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(e) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(f) As used in this section, "prohibited area" means any place where it is unlawful to discharge a weapon.

(g) A firearm shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm; except that a muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(h) Nothing in this section shall prevent any person engaged in any lawful business, including a nonprofit organization, or any

officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

(i) Nothing in this section shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

(j) (1) Nothing in this section is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property. As used in this subdivision, "immediate" means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

(2) A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses.

Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(k) Nothing in this section is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

(*l*) Nothing in this section shall prevent any person from having a loaded weapon, if it is otherwise lawful, at his or her place of residence, including any temporary residence or campsite.

(m) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative only until January 1, 2005.

SEC. 3.5. Section 1.5 of this bill incorporates amendments to Section 11106 of the Penal Code proposed by both this bill and Senate Bill 29. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 11106 of the Penal Code, and (3) this bill is enacted after Senate Bill 29, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other 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.

O

RESOLUTION CHAPTER 147

Senate Concurrent Resolution No. 64—Relative to crime statistics.

[Filed with Secretary of State August 30, 1982.]

WHEREAS, At the present time, there is no systematic collection of the ages of crime victims; and

WHEREAS, In order to better understand the problem of crime as it affects senior citizens, systematic collection of this information on a statewide basis is essential; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older; and be it further

Resolved, That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages of victims of crime and to incorporate that information in its crime statistic reporting system; and be it further

Resolved, That the Secretary of the Senate send copies of this resolution to the Attorney General.

RESOLUTION CHAPTER 148

Senate Concurrent Resolution No. 86—Relative to the John "Chuck" Erreca Safety Roadside Rest.

[Filed with Secretary of State August 30, 1982.]

WHEREAS, John "Chuck" Erreca was born on December 29, 1910, in the City of Los Banos, in the County of Merced, the son of immigrant French Basques; and

WHEREAS, He grew up in the "American tradition" of hard work on his father's ranch; and

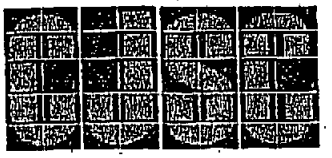
WHEREAS, He attended public schools in Los Banos, and graduated from St. Mary's College, majoring in Economics; and

WHEREAS, He returned to the ranch near Los Banos and became a successful farmer and cattle rancher; and

WHEREAS, His success in farming and ranching enabled him to participate in civic affairs and serve without salary for 23 years on the Los Banos City Council, 17 years of which he was the Mayor of the City; and

WHEREAS, He served as an officer and president of the Central Valley Division of the League of California Cities from 1951–1953; and

WHEREAS, In 1953 "Chuck" Erreca was elected to the Board of



CRIMINAL STATISTICS

REPORTING REQUIREMENTS

CALIFORNIA

DEPARTMENT OF JUSTICE

CRIMINAL JUSTICE

STATISTICS CENTER

March 2000

Table of Contents

Introduction

This document provides general guidelines to law enforcement agencies, District Attorneys, Public Defenders, and Probation Departments regarding their reporting requirements to the Department of Justice's Criminal Justice Statistics Center (CJSC). For each reporting requirement there is a brief description of what data is collected (introduction), which agencies are required to report the data (who), the code section(s) that require reporting (why), the due date of the report (when), and the form or alternative method required to be used to report the data (how).

For any additional information or clarification, please write or call our Special Requests Unit. They can be reached by telephone, FAX or e-mail:

California Department of Justice Telephone: (916) 227-3509

Division of Criminal Justice Information Services Fax: (916) 227-0427

Criminal Justice Statistics Center E-mail: CJSC@hdcdojnet.state.ca.us

Special Requests Unit

4949 Broadway, Room E-203

Sacramento, CA 95820

ARRESTS

Introduction

Arrest information is reported to the Department of Justice (DOJ), and is maintained in the Monthly Arrest and Citation Register data base. This data base contains information on felony and misdemeanor level arrests for adults and juveniles. Data elements include name, race/ethnicity, date of birth, sex, date of arrest, offense level, offense type, status of the offense, and law enforcement disposition. This information is used in publishing *Crime and Delinquency in California* and the *Criminal Justice Profile* series. Age, sex, race/ethnicity, and offense information is forwarded to the FBI for publication in *Crime in the United States*.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

PC 13021. Local law enforcement agencies shall report to the Department of Justice such information as the Attorney General may by regulation require relative to misdemeanor violations of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form JUS 750, or electronically.

CRIMES AND CLEARANCES

Introduction

Crimes and clearance information is to be reported to DOJ to provide statistical data on the offenses of criminal homicide, forcible rape, robbery, assault, burglary, larceny-theft, and motor vehicle theft. The data is to include the number of actual offenses as well as the number of clearances. Supplemental data are also collected on the nature of crime and the value of property stolen and recovered. This information is forwarded to the FBI for publication in *Crime in the United States*. Data are also published in *Crime and Delinquency in California* and the *Criminal Justice Profile* Series.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him

or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 4-927 (Return A) and JUS 729, or electronically.

ARSON

Introduction

Arson data is to be reported to DOJ to provide information on the type of arson, the number of actual offenses, the number of clearances, and the estimated dollar value of property damaged. This data is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority; Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 1-725, or electronically.

HOMICIDES

Introduction

Homicide data is to be reported to DOJ to provide information on the number of homicides, the victim/offender relationship, the day and month of the homicide, location, type of weapon used, and precipitating event. Homicide data are published in *Homicide in California, Crime and Delinquency in California*, and the *Criminal Justice Profile* series. Data are also reported to the FBI for publication in *Crime in the United States.*

Homicides (continued)

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13014. (b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background

PC 13022. Each sheriff and chief of police shall annually furnish the Department of Justice, on a form prescribed by the Attorney General, a report of all justifiable homicides committed in his jurisdiction. In cases where both a sheriff and chief of police would be required to report a justifiable homicide under this section, only the chief of police shall report such homicide.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form BCS-15 along with the Return A, or electronically.

HATE CRIMES

Introduction

Hate Crime data is to be reported to DOJ to provide information on the location of crime, type of bias-motivation, victim type (individual/property), number of victims/suspects, and victim's/suspect's race. This information is provided to the FBI for publication in *Crime in the Untied States* and published in *Hate Crime in California*, an annual report to the California Legislature.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

Hate Crimes (continued)

When

Reports are due monthly, by the 15th working day of the month.

How

Reporting may be accomplished manually by submitting the agency Crime Report, or electronically.

LAW ENFORCEMENT OFFICERS KILLED OR ASSAULTED

Introduction

Data on peace officers that were killed or assaulted in the line of duty is to be reported to DOJ to provide information on the type of criminal activity, type of weapon used, type of assignment, time of assault, number with or without personal injury, police assaults cleared, and officers killed by felonious act or by accident or negligence. This information is published in *Crime and Delinquency in California* and *Homicide in California*.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State

Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form FBI 1-705 or FBI 4-927 (Return A), or electronically.

DOMESTIC VIOLENCE RELATED CALLS FOR ASSISTANCE

Introduction

Domestic violence information is to be reported to DOJ to provide monthly summary statistical data on the number of domestic violence-related calls received, number of cases involving weapons, and the type of weapon used during the incident. This information is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

PC 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.

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

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

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

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form CJSC 715, or electronically.

VIOLENT CRIMES COMMITTED AGAINST SENIOR CITIZENS

Introduction

Information regarding violent crimes committed against senior citizens is to be reported to DOJ to provide summary data on the number of persons 60 years of age or older who were victims of homicide, forcible rape, robbery, and aggravated assault.

Who

Sheriff Departments, Police Departments, and other state and local agencies with peace officer powers.

Why

Senate Resolution 64, Chapter 147, 1982, be it resolved by the Senate of the State of California, the Assembly thereof concurring, That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form BCS 727, or electronically.

DEATH IN CUSTODY

Introduction

Information on persons who die while in the custody of a local or state law enforcement agency is to be reported to DOJ to provide descriptive statistical information on the circumstances relating to the death.

Who

Sheriff Departments, Police Departments, Probation Departments and other state and local agencies with peace officer powers

Why

GC 12525. In any case in which a person dies while in the custody of any law enforcement agency or while in custody in a local or state correctional facility in this state, the law enforcement agency or the agency in charge of the correctional facility shall report in writing to the Attorney General, within 10 days after the death, all facts in the possession of the law enforcement agency or agency in charge of the correctional facility concerning the death. These writings are public records within the meaning of subdivision (d) of Section 6252 of the California Public Records Act (Chapter 3.5 (commencing with

Section 6250) of Division 7 of Title 1), are open to public inspection pursuant to Sections 6253, 6256, 6257, and 6258. Nothing in this section shall permit the disclosure of confidential medical information that may have been submitted to the Attorney General's office in conjunction with the report except as provided in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

Death in Custody (continued)

When

Reports are due as needed, within 10 days of the date of death.

How

Reporting is accomplished manually by submitting form CJSC 713.

ADULT PROBATION

Introduction

Data regarding adult probation is to be reported to DOJ to provide a statistical profile of the probation function for superior and lower courts by county, type of placement, reasons for removal from probation, and the number of persons in supervision caseloads. This data is published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Probation Departments.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting is accomplished manually by submitting form CJSC 726.

JUVENILE COURT AND PROBATION STATISTICAL SYSTEM

Introduction

Juvenile justice data is to be reported to DOJ to provide information on the administration of juvenile justice in California. Information is collected on a juvenile's progress through the juvenile justice system from probation intake to final case disposition.

Who

Probation Departments.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority, Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

WI 285. All probation officers shall make such periodic reports to the Bureau of Criminal Statistics as the bureau may require and upon forms furnished by the bureau, provided that no names or social security numbers shall be transmitted regarding any proceeding under Section 300 or 601.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting is accomplished electronically, by cartridge or diskette, using JCPSS software.

CONCEALABLE WEAPONS STATISTICAL SYSTEM

Introduction

Concealable weapon data is to be reported to DOJ to provide information on race, ethnicity, age, and gender for each individual charged with a felony or a misdemeanor for carrying either a concealed weapon or loaded firearm.

Who

District Attorneys.

Why

PC 12025(h) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

PC 12031(m) (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

When

Reports are due monthly, by the 10th working day of the month.

How

Reporting may be accomplished manually by submitting form CJSC 4, or electronically, through the Attorney General's LegalNet system or file transfer protocol.

HATE CRIME PROSECUTION SURVEY

Introduction

Hate crime data is to be reported to DOJ to provide information regarding criminal acts to cause physical injury, emotional suffering or property damage where there is a reasonable cause to believe that the crime was motivated by the victim's race, ethnicity, religion, gender, sexual orientation or physical or mental disability.

Who

District Attorneys.

Hate Crime Prosecution Survey (continued)

Why

13023. Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts

or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, or physical or mental disability. On or before July 1, 1992, and every July 1 thereafter, the Department of Justice shall submit a report to the Legislature analyzing the results of the information obtained from local law enforcement agencies pursuant to this section.

When

Annually - the first week in February.

How

Reporting is accomplished manually by submitting form CJSC 5.

LAW ENFORCEMENT AND CRIMINAL JUSTICE PERSONNEL SURVEYS

Introduction

Agencies are to report to DOJ the number of full time, sworn and civilian male and female law enforcement personnel employed by law enforcement agencies, District Attorneys, Public Defenders or Probation Departments. Data are provided to the FBI for publication in *Crime in the United States.* Data are also published in *Crime and Delinquency in California* and the *Criminal Justice Profile* series.

Who

Sheriff Departments, Police Departments, District Attorneys, Public Defenders, Probation Departments and other state and local agencies with peace officer powers.

Why

PC 13020. It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, Health and Welfare Agency, Department of Corrections, Department of Youth Authority,

Law Enforcement and Criminal Justice Personnel Surveys (continued)

Youthful Offender Parole Board, Board of Prison Terms, State Department of Health, Department of Benefit Payments, State Fire Marshal, Liquor Control Administrator, constituent agencies of the State Department of Investment, and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title.

When

Annually - date specified for each agency.

How

Reporting is accomplished manually by submitting form JUS 02.

CITIZENS' COMPLAINTS AGAINST PEACE OFFICERS SURVEY

Introduction

Agencies are to report to DOJ statewide summary information on the number of non-criminal and criminal (misdemeanor and felony) complaints reported by citizens to law enforcement agencies, and the number of complaints that were sustained. Data are published in *Crime and Delinquency in California*.

Who

Sheriff Departments, Police Departments, District Attorneys, Probation Departments and other state and local agencies with peace officer powers.

Why

PC 13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(d) The number of citizens' complaints received by law enforcement agencies under Section 832.5. Such statistics shall indicate the total number of these complaints, the number alleging criminal conduct of either a felony or misdemeanor, and the number sustained in each category. The report shall not contain a reference to any individual agency but shall be by gross numbers only.

When

Annually - the third week of December.

How

Reporting is accomplished manually by submitting form CJSC 724.

Data	Reporting Agencies						Frequency	Statute	Reporting Form	Electronic Reporting
	SD	PD	Other*	District Attorneys	Public Defenders	Probation Dept.				
Arrests	X	X	X				Monthly-10th working day	PC 13020 and PC 13021	JUS 750	X
Crimes and Clearance	X	X	X				Monthly-10th working day	PC 13020	FBI 4-927, JUS 729	X
Arson	X	X	X				Monthly-10th working day	PC 13020	FBI 1-725	X
Homicides	X	X	X				Monthly-10th working day	PC 13014(b) and PC 13022	BCS 15 Return A	X
Hate Crimes	X	X	X				Monthly-15th working day	PC 13023	Agency Crime Report	X
Law Enforcement Officers Killed or Assaulted	X	X	X				Monthly-10th working day	PC 13020	FBI 1-705, FBI 4-927	X
Domestic Violence Related Calls for Assistance	X	X	X				Monthly-10th working day	PC 13730(a)(c)	CJSC 715	X
Violent Crimes Committed Against Senior Citizens	X	X	X				Monthly-10th working day	Senate Resolution 64, Chapter 147, 1982	BCS 727	X
Death in Custody	X	X	X			X	As needed w/in 10 days of death	GC 12525	CJSC 713	None
Adult Probation						X	Monthly-10th working day	PC 13020	CJSC 726	None
Juvenile Court and Probation Statistical System						X	Monthly-10th working day	PC 13020 and WI 285	None	X
Concealable Weapons Statistical System				X			Monthly-10th working day	PC 12025(h) and PC 12031(m)	CJSC 4	X
Law Enforcement & Criminal Justice Personnel Surveys	X	X	X	X	X	X	Annually Varies by agency	PC 13020	JUS 02	None
Citizens' Complaints Against Peace Officers Survey	X	X	X	X		X	Annually December 15	PC 13012(d)	CJSC 724	None
Hate Crime Prosecution Survey				X			Annually February 4	PC 13023	CJSC 5	None

*State and local agencies with peace officer powers.

EXHIBIT B

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:

Madera Police Department
Claimant

No. CSM-4222

DECISION

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

This Decision shall become effective on January 22, 1987.

IT IS SO ORDERED January 22, 1987.

Peter Pelkofer Vice Chairman
Commission on State Mandates

WP 1551A

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:	
Madera Police Department Claimant	CSM-4222

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on November 20, 1986, in Sacramento, California, during a regulary scheduled meeting of the commission. Chief Gordon Skeels appeared on behalf of the Madera Police Department. Sterling O'Ran of the Office of Criminal Justice Planning also appeared.

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

I.
NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; legislative appropriation; a timely filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II.
FINDINGS OF FACT

1. The test claim was filed with the Commission on State Mandates on June 23, 1986, by the Madera Police Department.

2. The subject of the claim is Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985.

3. Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985 require that California law enforcement agencies develop, adopt and implement written policies and standards for officers' response to domestic violence calls. It also requires law enforcement agencies to maintain records and recording systems specific to domestic violence activities and to provide specific written information to apparent victims of domestic violence.

4. The Madera Police Department has incurred increased costs as a result of having to: develop, adopt and implement standards for police officers' responses to domestic violence calls; maintain records and recording systems; provide written information to victims of domestic violence; compile and submit monthly summary reports to the State Attorney General; develop of a Domestic Violence Incident Report form.

5. The Madera Police Department's resulting increased costs are costs mandated by the State.

III.
DETERMINATION OF ISSUES

1. The Commission has the authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985 impose a reimbursable state mandate upon California law enforcement agencies. The Madera Police Department has established that these statutes impose a higher level of service by requiring law enforcement agencies to develop, adopt and implement policies and standards for officer's responses to domestic violence calls; by requiring the maintenance of records and recording systems, and by requiring that specific written information be provided to victims of domestic violence.

WP: 1462A

WP 1575A
Adopted: 2/26/87

PARAMETERS AND GUIDELINES
Chapter 1609, Statutes of 1984 and
Chapter 668, Statutes of 1985
DOMESTIC VIOLENCE

I. SUMMARY OF MANDATE

Chapter 1609, Statutes of 1984 added Chapters 1 through 5, and non-consecutive Sections 13700 through 13731 to the California Penal Code. These sections require all law enforcement agencies in the state to develop, adopt and implement written policies and standards for officers' response to domestic violence calls by January 1, 1986. Existing local policies and those developed must be in writing and available to the public upon request and must include specific standards for a range of related activities.

Chapter 1609, Statutes of 1984 also requires law enforcement agencies to develop an incident report form and maintain records of all protection orders with respect to domestic violence incidents. This is required to be available for the information of and use by law enforcement officers responding to domestic violence related calls for assistance and to provide information about such calls to the Attorney General on a monthly basis.

II. COMMISSION ON STATE MANDATES DECISION

On November 25, 1986, the Commission on State Mandates found that Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1984 imposed an increased level of service upon local law enforcement agencies thereby mandating that these agencies provide the services as described above. The commission's finding was in response to a test claim, originally filed, by the City of Madera Police Department on June 23, 1986.

III. ELIGIBLE CLAIMANTS

Law enforcement agencies are eligible to file for reimbursement of costs incurred as a result of the state legislated domestic violence programs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1609, Statutes of 1984 became effective on January 1, 1985, and Chapter 668, Statutes of 1985 became effective January 1, 1986. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on June 23, 1986, therefore, costs incurred on or after July 1, 1985, are reimbursable. Costs incurred as a result of Chapter 668, Statutes of 1985 are reimbursable after its effective date of January 1, 1986.

C. The costs for the maintenance of all protection order records which restrain an individual from the home or other court defined areas who has been accused of an illegal behavior and has applied to the court and been granted such an order.

If total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise provided in Section 17564 of the Government Code.

VI. CLAIM PREPARATION

Attach a statement showing the actual increased costs incurred to comply with the mandate.

A. Employee Salaries and Benefits

Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and productive hourly rates and benefits.

B. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials aquired which have been consumed or expended specifically for the purposes of this mandate.

C. Allowable Overhead Costs

Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.

D. Supporting Data

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of the costs. These documents must be kept on file and made available at the request of the State Controller.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claimed. In addition, this reimbursement for this mandate received from any source, e.g., federal, state, block grants, etc., shall be identified and deducted from this claim.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

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

And filed on December 27, 1996;

By the County of Los Angeles, Claimant.

CSM-96-362-01
Domestic Violence Training and Incident Reporting

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

STATEMENT OF DECISION

The attached Statement of Decision is hereby adopted by the Commission on State Mandates on February 26, 1998

Date: March 3, 1998

Paula Higashi, Executive Director

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Sections 13519 and 13730, as amended by Chapter 965, Statutes of 1995 And filed on December 27, 1996; By the County of Los Angeles, Claimant.	NO. CSM – 96-362-01 DOMESTIC VIOLENCE TRAINING AND INCIDENT REPORTING PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (Presented for adoption on January 29, 1998)

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on December 18, 1997, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles; Mr. Glen Fine, appeared for the Commission on Peace Officer Standards and Training; and Mr. James Apps and Mr. James Foreman appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Captain Dennis D. Wilson, Deputy Bernice K. Abram, and Ms. Martha Zavala.

At the hearing, evidence both oral and documentary was introduced, 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 Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

PART I. DOMESTIC VIOLENCE TRAINING

Issue 1: Does the domestic violence continuing education requirement upon law enforcement officers under Penal Code section 13519, subdivision (e), impose a new program or higher level of service

upon local agencies under section 6 of article XIII B of the California Constitution?

The County of Los Angeles alleged that Penal Code section 13519, subdivision (e), as amended by Chapter 965, Statutes of 1995, imposes a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIII B of the California Constitution. The statute which is the subject of this test claim is as follows:

> "(e) Each law enforcement *officer* below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence *shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d)*. The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature *not* to increase the annual training costs of local government." (Emphasis added.)

COMMISSION FINDINGS:

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language (1) must direct or obligate an activity or task upon local governmental entities, and (2) the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.[1]

The foregoing provisions require each law enforcement *officer* below the rank of supervisor, who is assigned to patrol duties and normally responds to domestic violence calls or incidents, to complete an updated course of instruction on domestic violence every two years. This course of instruction must be developed according to POST's standards and guidelines, which are described in subdivision (d) of section 13519. Although the statute imposes an express continuing education requirement upon individual officers and not local agencies, the last sentence of subdivision (e) indicates the Legislature's awareness of the potential impact of this training course upon local governments (i.e., "[i]t is the intent of the Legislature not to increase the annual training costs of local government.")

Thus, the Commission found this continuing education activity is imposed upon local agencies whose local law enforcement officers carry out a basic governmental function by

[1] *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835.

providing services to the public. Such activity is not imposed on state residents generally.[2] In sum, the Commission found that the first requirement to determine whether the test claim legislation imposes state-mandated program is satisfied.

Second, subdivision (e) of section 13519 imposes a new requirement on certain law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. This training obligation was not required immediately prior to the enactment of subdivision (e). Instead, local law enforcement agencies were *encouraged*, but not required, to include periodic updates and training on domestic violence *as part of their advance officer training program only.* (Former Pen. Code § 13519, subd. (c).) Accordingly, the Commission found that the second requirement to determine whether the test claim legislation imposes a state mandated program is satisfied.

Third, the Commission found that subdivision (e) is state mandated because local agencies have no options or alternatives available to them and, therefore, the officers described in subdivision (e) must attend and complete the updated domestic violence training course from a POST-certified class.[3]

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

Issue 2: Does section 13519, subdivision (e), impose costs mandated by the state upon local agencies which are reimbursable from the State Treasury?

The latter portion of Penal Code section 13519, subdivision (e), provides in pertinent part:

> ". . . . The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local governmental entities."
> (Emphasis added.)

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

COMMISSION FINDINGS:

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

> ". . . . [A]ny increased costs which a local agency . . . is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, . . . which mandates a new program or higher level of service of an

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[2] *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

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

existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

If the claimant's domestic violence training course, under section 13519, subdivision (e), caused an increase in the total number of continuing education hours required for these certain officers, then the increased costs associated with the new training course are reimbursable as "costs mandated by the state" (subject to any offset from the receipt of any state moneys received for the costs incurred in attending and completing the subdivision (e) domestic violence training course).

On the other hand, if there is no overall increase in the total number of continuing education hours for these officers attributable to the subdivision (e) domestic violence training course, then there are no increased training costs associated with this training course. Instead, the subdivision (e) course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

Based on the evidence submitted by the parties, and the plain language of the test claim statute, the Commission found that local agencies incur *no* increased "costs mandated by the state" in carrying out the two hour domestic violence update training.

POST regulations provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. Section 1005, subdivision (d), of Title 11, California Code of Regulations, states in pertinent part:

"Continuing Professional Training (Required).

"(1) Every peace officer below the rank of a middle management position as defined in section 1001 and every designated Level 1 Reserve Officer as defined in Commission Procedure H-1-2 (a) *shall satisfactorily complete the Advanced Officer Course of **24 or more hours** at least once every two years after meeting the basic training requirement.*"

"(2) The above requirement may be met by satisfactory completion of one or more Technical Courses totaling 24 or more hours, or satisfactory completion of an alternative method of compliance as determined by the Commission..."

"(3) Every regular officer, regardless of rank, may attend a certified Advanced Officer Course and the jurisdiction may be reimbursed."

"(4) Requirements for the Advanced Officer Course are set forth in the POST Administrative Manual, section D-2."

The evidence submitted by the parties reveals that the updated training is accommodated or absorbed within the 24-hour continuing education requirement provided in the above regulation.

POST Bulletin 96-2 was forwarded to local law enforcement agencies shortly after the test claim statute was enacted. The Bulletin specifically recommends that local agencies make the required updated domestic violence training part of the officer's continuing

professional training. It does not mandate creation and maintenance of a separate schedule and tracking system for the required domestic violence training. To satisfy the training in question, POST prepared and provided local agencies with course materials and a two-hour videotape.

Additionally, the letter dated July 11, 1997, from Glen Fine of POST indicates POST's interpretation of the test claim statute that the domestic violence update training be included *within* the 24 hour continuing education requirement set forth above. Accordingly, the two-hour course may be credited toward satisfying the officer's 24-hour continuing education requirement.

The Commission disagreed with the claimant's contention that it is entitled to reimbursement as a result of the test claim statute since it cannot redirect funds for salary reimbursement from other non-funded POST training modules. The POST memorandum submitted by the claimant, dated July 6, 1993, reveals that the claimant has not received salary reimbursement for officer training since 1993, before the enactment of the test claim statute.

Accordingly, the Commission found that local agencies incur no increased costs mandated by the state in carrying out this two hour course because:

- *immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- the two hour domestic violence training update may be credited toward satisfying the officer's 24 hour minimum,
- the two hour training is *not* separate and apart nor "on top of" the 24 hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- of the 24 hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22 hour requirement by choosing from *the many elective courses* certified by POST.

In sum, the Commission found that local agencies do *not* incur increased training costs for the two hour domestic violence training update because the course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training as spelled out in the test claim statute. The minimum POST requirement for continuing education for the officers in question *immediately before and after* the effective date of the test claim statute was and remains at 24 hours. Of the 24 hours, the Legislature requires that two out of the 24 must be an updated course on domestic violence certified by POST.

PART I CONCLUSION

Based on the foregoing evidence, the Commission concludes that Penal Code section 13519, subdivision (e), does not impose a reimbursable state mandated program upon local law enforcement agencies and denies this portion of the test claim.

PART II: DOMESTIC VIOLENCE INCIDENT REPORTING

Issue 1: Do the provisions of Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, impose a new program or higher level of service upon local agencies within the meaning of section 6, article XIII B of the California Constitution?

BACKGROUND:

Penal Code section 13730 was originally added by Chapter 1609, Statutes of 1984. At that time, the statute required each law enforcement agency to develop a domestic violence incident report. The 1984 statute provided the following:

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.
>
> (b) The Attorney General shall report annually to the Governor, the Legislature, and the public, the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.
>
> (c) *Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.*" (Emphasis added.)

Chapter 1609, Statutes of 1984, was the subject of a previous test claim (CSM-4222) approved by the Commission on January 22, 1987. The Parameters and Guidelines for Chapter 1609, Statutes of 1984, provided that the following costs were reimbursable:

(1) the "costs associated with the *development of a Domestic Violence Incident Report form* used to record and report domestic violence calls"; and

(2) costs incurred "for the *writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.*"

In 1993, the Legislature made minor nonsubstantive changes to section 13730 and amended subdivision (a) to include the second underlined sentence relating to the written incident report required under subdivision (c):

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General." (Chapter 1230, Statutes of 1993.)

Since the Legislature required local law enforcement agencies to develop and complete the domestic violence incident report form in subdivision (c) under the 1984 legislation, the 1993 amendment to subdivision (a) merely *clarified* this reporting requirement, rather than mandating a new or additional requirement. The Commission further noted that a test claim has never been filed on Chapter 1230, Statutes of 1993, requesting that the amendment constitute a new program or higher level of service.

During fiscal years 1992/93 through 1996/97, the Legislature no longer mandated the incident reporting requirements set forth in Penal Code section 13730 pursuant to Government Code section 17581. Accordingly, it was optional for local law enforcement agencies to implement the domestic violence incident reporting activity during these fiscal years. The fiscal year 1997/98 budget continues the suspension, effective August 18, 1997. (Chapter 282, Statutes of 1997, Item 9210-295-0001, par. 2, pp. 587-588.)

In 1995, the Legislature amended Penal Code section 13730, subdivision (c), in Chapter 965, Statutes of 1995. Subdivision (c), as amended by Chapter 965, Statutes of 1995, provides the following:

> "Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:
>
> (1) A ***notation*** of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.
>
> (2) A ***notation*** of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim." (Underscored text added by Chapter 965, Statutes of 1995)

The County of Los Angeles alleged that Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, imposes a new program or higher level of service in an existing program upon local agencies within the meaning of section 6, article XIII B of the California Constitution.

COMMISSION FINDINGS:

The Commission found that Penal Code section 13730, subdivision (c), obligates local law enforcement agencies to include in the domestic violence incident reports additional information relating to the use of alcohol or controlled substances by the abuser, and any prior domestic violence responses to the same address. This additional reporting activity is performed by local law enforcement agencies that carry out basic governmental functions by providing a service to the public. Such activities are not imposed on state residents generally.[4] Thus, the Commission found that the first requirement to determine whether a statute imposes a reimbursable state mandated program is satisfied.

Second, before the enactment of the test claim statute, local law enforcement agencies were required to develop and complete domestic violence incident reports. However, local agencies were *not* required to include in the report specific information relating to the alleged abuser's use of alcohol or controlled substances, or information relating to any prior domestic violence calls made to the same address.

Accordingly, the Commission found that Penal Code section 13730, subdivision (c), constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

The Commission's inquiry continued to determine whether the test claim legislation is state mandated for purposes of reimbursement from the State Treasury.[5] As previously indicated, the original statute, which required the development and completion of a domestic violence incident report was determined by the Commission to be a reimbursable state mandated program. However, this program was made optional by the Legislature under Government Code section 17581.

Issue 2: If Penal Code section 13730, as originally added by Chapter 1609, Statutes of 1984, is made optional by the Legislature pursuant to Government Code section 17581, are subsequent legislative amendments to section 13730 also made optional?

The County of Los Angeles contended that Chapter 965, Statutes of 1995, is not included in the Legislature's suspension of the original statute. The County contended that the chapters need to be addressed separately. The County further contended that Chapter 965, Statutes of 1995, is not automatically made optional by association with the original statute. Rather the determination of whether a statute is suspended is up to Legislature.

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[4] *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835.

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

COMMISSION FINDINGS:

Government Code section 17581 provides, in pertinent part, the following:

> "(a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year if all of the following apply:
>
> "(1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to section 6 of article XIIIB of the California Constitution.
>
> "(2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for that fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.
>
> "(b) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency.
>
> "....."

The provisions of section 17581 provide that if both of the conditions set forth therein are satisfied, the identified state mandated program becomes optional and the affected local agencies are not required to carry out the state program. If the local agency elects to carry out the identified state program, however, it is authorized to assess a fee to recover the costs reasonably borne by the local agency.

The Commission determined that Penal Code section 13730, as originally added by Chapter 1609, Statutes of 1984, imposed a reimbursable state mandated program upon local law enforcement agencies. As previously indicated, this program required all law enforcement agencies to develop and complete an incident report relating to all domestic violence calls.

However, during fiscal years 1992/93 through 1997/98, the Legislature specifically identified Chapter 1609, Statutes of 1984 in the Budget Act for the periods in question pursuant to Government Code section 17581, assigning zero dollar appropriations to the original state mandated program under Chapter 1609, Statutes of 1984. Both conditions set forth in section 17581 were met, i.e., (1) the Commission determined that Penal Code section 13730 of Chapter 1609, Statutes of 1984, imposed a state mandated program and

(2) the Legislature identified Chapter 1609, Statutes of 1984, and appropriated zero funds. Thus, the domestic violence incident report program was optional and no longer state mandated. Notwithstanding, the Commission recognized that during the period from July 1, 1997 through August 17, 1997, and during subsequent periods when the state operates without a budget, the original suspension of the mandate would not be in effect.

The test claim statute (Chapter 965, Statutes of 1995) amends Penal Code section 13730 by requiring additional information to be contained within the domestic violence incident report. Since the development and completion of the incident report has been made optional by the Legislature pursuant to Government Code section 17581, the Commission inquired whether the additional requirements imposed by the test claim are also optional.

On its face, the 1997/98 State Budget Act does not identify Chapter 965, Statutes of 1995, as a suspended mandate. However, the Commission found that, in substance, the test claim legislation *is* affected by the Legislature's actions making the original test claim legislation optional.

The 1995 amendment to subdivision (c) of section 13730 requires information relating to the alleged abuser's use of alcohol or controlled substances, and any prior responses to the same address be *added to the domestic violence incident report form itself.* The Commission agreed that the additional notations required under the test claim statute constitute an additional activity. For this reason, the Commission found that the test claim statute constitutes a new program or higher level of service.

However, with the Legislature's use of the word "notation" in subdivision (c), the Commission disagreed that the 1995 amendment to section 13730 made the domestic violence incident report "very different" from what was required in 1984. The test claim statute does not require a new or different report. It simply specifies the minimum content of the underlying report.

Therefore, the Commission found that the new requirements imposed by Chapter 965, Statutes of 1995, are *not* independent of the incident report as suggested by the claimant; rather, they are encompassed and directly connected to the underlying incident reporting program established by the Legislature in Chapter 1609, Statutes of 1984.[6]

The Commission further found that section 13730, subdivision (c), requires additional information to be included on the domestic violence incident report, the performance of domestic violence incident reporting is *not* state mandated because the development and completion of the report itself was made optional by the Legislature. In other words,

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[6] This test claim is to be distinguished from the previously decided test claim (September 25, 1997), entitled *Domestic Violence Arrest Policies and Standards*, where the Commission determined that the legislation in question imposed new and distinct activities and, therefore, was not affected by Government Code section 17581. In the *Domestic Violence Arrest Policies and Standards* test claim, the Legislature made optional the original requirement to develop, adopt and implement written policies for *response* to domestic violence calls pursuant to Government Code section 17581. The test claim legislation amended the statute adding the requirement to develop and implement *arrest* policies for domestic violence offenders, a new and distinct requirement not encompassed by the previously suspended requirement to develop response policies.

since the development and completion of the incident report are not state mandated, then the new information to be included on the incident report is likewise not state mandated.

On the other hand, *if* a local agency voluntarily opts or elects to complete the incident report, then the additional information must be included on the report pursuant to the provisions of the test claim statute. In this respect, Chapter 965, Statutes of 1995, is not a meaningless and unnecessary law as suggested by the claimant.

Therefore, the Commission determined that the new additional information to the domestic violence incident report is not a reimbursable state-mandated program because:

- Presently, the State Budget Act of 1997/98 makes the completion of the incident report *optional* and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

Notwithstanding the foregoing, the Commission determined that for the *limited* window period from July 1, 1997 through August 17, 1997, the domestic violence incident reporting, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

The Commission further determined that in all subsequent "window periods" when the state operates without a budget, the domestic violence incident reporting program, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

PART II CONCLUSION

The Commission concludes that pursuant to section 6 of article XIII B of the California Constitution and section 17514 of the Government Code that:

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does not impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581.

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for the *limited* window period from July 1, 1997 (the start of the new fiscal year) through August 17, 1997, when the State Budget Act makes the incident reporting program optional.
- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for all *subsequent* window periods from July 1 (the start of the new fiscal year) until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

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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, Executive Director _____ Date

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

On September 25, 2003, 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 6-0 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 6-0 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, § 17581), the Commission determined, however, that during window periods when the state operates

(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 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 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.

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.[5] 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 Government 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.

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, Government 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.

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.

- 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 1981, 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] Government Code section 6254, subdivision (f)(1).

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

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, 1817-1818, 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.

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] Government Code section 26202 was last amended by Statutes 1963, chapter 1123.

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

> 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), permitted 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.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Family Code Section 6228 and Penal Code Sections 12028.5 and 13730 Statutes 1984, Chapter 901; Statutes 2001, Chapter 483; Statutes 2002, Chapters 377, 830 and 833 Filed on April 2, 2003 By County of Los Angeles, Claimant	**Case No.:** 02-TC-18 *Crime Victims' Domestic Violence Incident Reports II* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 27, 2007*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on September 27, 2007. Hasmick Yaghobyan and Suzie Ferrell appeared on behalf of claimant County of Los Angeles. Carla Castaneda and Donna Ferebee appeared on behalf of Department of Finance.

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 to partially approve the test claim at the hearing by a vote of 7-0.

Summary of Findings

The Commission finds that effective January 1, 2002,[1] Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance:

- To include on the domestic violence incident report form 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 (Pen. Code, § 13730, subd. (c)(3).

[1] Government Code section 17556, subdivision (e).

process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5, subd. (e).)

- If the local 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, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)
- To 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. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of 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. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the following activities are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, for local agencies, when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search.

- The one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
- If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of

(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.[6]

Other subdivisions of section 6228 were amended similarly. Subdivision (d), which specifies that the person requesting copies of the incident report must present identification, was amended to require the representative to present a certified copy of the death certificate of the victim at the time of the request. Subdivision (g) defines the representative of the victim as any of the following:

(1) (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

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[6] Family Code section 6211 defines domestic violence as "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.
(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).
(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."

Family Code section 6203 defines abuse as 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 engage in any behavior that has been or could be enjoined pursuant to Section 6320."

petition to determine whether the firearm or weapon should be returned, extending it from 30 to 60 days after the seizure, or from 60 to 90 days with extensions.[16] In addition, the amendment lowered the standard of evidence needed to keep the firearm or weapon from being returned to the owner, from clear and convincing to a preponderance of 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."[17]

The 2002 amendment also added a provision requiring the court to order returning the firearm or weapon to the owner, and to award reasonable attorney's fees to the prevailing party 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."[18]

Prior Commission Decisions

CSM 4222: In 1987, the Commission approved a test claim on Penal Code section 13730, as added by Statutes 1984, chapter 1609 (*Domestic Violence Information*). The parameters and guidelines for *Domestic Violence Information* authorize 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 suspended Penal Code section 13730 (as added by Stats. 1984, ch. 1609) pursuant to Government Code section 17581. Suspending a statute means the Legislature assigns a zero-dollar appropriation to the program and makes it optional.

CSM 96-362-01: In February 1998, the Commission considered a test claim on the 1995 amendment to Penal Code section 13730 (*Domestic Violence Training and Incident Reporting*).

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

The Commission determined 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 optional, so 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 language of the suspension statute (Gov. Code, § 17581), the Commission determined, however, that during periods when the state operates without a budget, the original suspension of the mandate would not be in effect. Thus, for the periods when the state operates

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[16] Penal Code section 12028.5, subdivision (f).

[17] *Ibid.*

[18] Penal Code section 12028.5, subdivision (j).

enforcement agencies to do the following based on Statutes 2001, chapter 483 that added subdivision (c)(3) to Penal Code section 13730:[22]

1. When "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."
2. 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. To confiscate "[a]ny firearm or other deadly weapon discovered by an officer at the scene of a domestic violence incident ... pursuant to Section 12028.5"

Claimant requests reimbursement for local law enforcement agencies to do the following based on Penal Code section 12028.5:[23]

1. 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." (§ 12028.5 (b).)
2. "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. (§ 12028.5 (b).)
3. The confiscated "... firearm or other deadly weapon shall be held [not less than] 48 hours." (§ 12028.5 (b).)
4. "[T]he 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." (§ 12028.5 (b).)
5. 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." (§ 12028.5 (c).)
6. 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." (§ 12028.5 (d).)

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[22] Test Claim 02-TC-18, pages 2-3.

[23] Test Claim 02-TC-18, pages 7-10

Claimant also requests reimbursement for local law enforcement agencies to, based on Family Code section 6228, to prepare and provide domestic violence incident reports for the "representatives" of domestic violence victims, as provided in statute.[24]

Claimant alleges that the duty to provide requested domestic violence incident reports and face sheets to 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 Statutes 1984, chapter 1609 is made optional by the Legislature's suspension of the mandate pursuant to Government Code section 17581. Claimant submits that it has no reasonable alternative but to prepare the incident report or face sheet.

Claimant also submitted a declaration that it will incur "costs well in excess of $1,000 during the 2002-03 fiscal year to implement" the test claim statutes.[25] Another declaration includes the time required for the alleged activities: "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 duties listed in nos. 1-11 above.[26]

Claimant submitted comments concurring with the draft staff analysis.

State Agency Position

The Department of Finance, in comments filed August 20, 2007, concurs in part with the draft staff analysis. Finance disagrees with the discussion of Penal Code 13730, subdivision (c)(3), and argues that the finding should conform to the Commission's decision in CSM-96-362-01. Finance also disagrees that activities in Penal Code section 12028.5, subdivisions (f) and (i), should be reimbursable because, according to Finance, they are discretionary. These comments are further detailed and addressed below.

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[24] Test Claim 02-TC-18, pages 10-12.

[25] Test Claim 02-TC-18, Exhibit 8, Declaration of Bernice Abram, page 1; Exhibit 9, Declaration of Wendy Watanabe, page 1.

[26] Test Claim 02-TC-18, Exhibit 8, Declaration of Bernice Abram, page 2; Exhibit 9, Declaration of Wendy Watanabe, page 2.

legislation.[33] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[34]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[35]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[36] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[37]

Issue 1: Does Penal Code section 13730, as amended by Statutes 2001, chapter 483, constitute a reimbursable state-mandated program?

Section 13730 requires local law enforcement agencies to develop and complete incident report forms for all domestic violence calls. As stated in subdivision (c) "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." [Emphasis added.] The report is required to include notations of officer observations regarding (in subd. (c)(1)) whether the alleged abuser was under the influence of alcohol or a controlled substance, and (in subd. (c)(2)) whether any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

It was amended (Stats. 2001, ch. 483) in subdivision (c)(3) to add the following to the form:

> 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.

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[33] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[34] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[35] *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 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[36] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[37] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

year 1992-1993. The Legislature specifically identified Statutes 1984, chapter 1609 in the Budget Act and assigned a zero dollar appropriation to it. By suspending Statutes 1984, chapter 1609, the Legislature made preparing the written domestic violence incident report form an optional activity for local government.

Statutes 1993, chapter 1230 added the following to subdivision (a) of section 13730: "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." This 1993 amendment has never been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring local agency reimbursement, as required by Government Code section 17581. In sum, the 1993 amendment is not eligible for suspension.

This means, in essence, that the provisions of subdivision (c) in section 13730, when suspended by the Budget Act, are permissive, but the plain language of the 1993 amendment requires a written incident report for all domestic violence calls for assistance in subdivision (a). When statutory provisions conflict in this way, the Commission, like a court, relies on the following rule of statutory construction: "[W]hen two laws, upon the same subject, passed at different times, are inconsistent with each other, the one last passed must prevail."[41] Accordingly, the 1993 amendment to subdivision (a) prevails over the suspension of subdivision (c).[42] Thus, preexisting law requires that every domestic violence related call for assistance be supported with a written domestic violence incident report. Consequently, the Commission finds that including the firearm and weapon information in the domestic violence incident report form, as required by the 2001 amendment to Penal Code section 13730, subdivision (c), is state-mandated.

Finance disagrees. In comments filed August 30, 2007, Finance argues that this conclusion is inconsistent with the Commission's February 1998 decision in the *Domestic Violence Training and Incident Reporting* test claim (CSM-96-362-01) in which the Commission found that additional information on the domestic violence incident report was not mandated because the suspension of the statute made completion of the incident report optional, so the additional information under the test claim statute came into play only after a local agency elected to complete the incident report. Finance indicates in its comments that the Commission's 1998 decision "found that the 1993 amendment to Penal Code section 13730 (a), (Stats. 1993, ch.

2005 Budget Act (Stats. 2004, ch. 208) Item 9210-295-0001, Provision 3, Schedule (5); 2002-2003 Budget Act (Stats. 2002, ch. 379), Item 9210-295-0001, Provision 3, Schedule (8); 2001-2002 Budget Act (Stats. 2001, ch. 106), Item 210-295-0001, Provision 3, Schedule (8); 2000-2001 Budget Act (Stats. 2000, ch. 52), Item 210-295-0001, Provision 3, Schedule (8); 1999-2000 Budget Act (Stats. 1999, ch. 50), Item 210-295-0001, Provision 2, Schedule (8).

[40] 2003-2004 Budget Act (Stats. 2003, ch. 157) Final Change Book, p.655, Item 9210-295-0001, Provision 3.

[41] *People v. Kuhn* (1963) 216 Cal.App.2d 695, 700.

[42] This does not mean that the suspensions in the Budget Acts are idle acts of the Legislature, since there were other findings in the Commission's decision (CSM 4222) that are suspended.

The next issue is whether the provision in subdivision (c)(3) is a new program or higher level of service. To determine this, the test claim statute is compared to the legal requirements in effect immediately before enacting the test claim statute.[47]

Although preexisting law required filing an incident report for all domestic violence incident-related calls, as discussed above, preexisting law did not require the incident report to contain the following:

> 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. (Pen. Code, § 13730, subd. (c)(3).)

Therefore, the Commission finds that the following is a new program or higher level of service within the meaning of article XIII B, section 6: including on the domestic violence incident report form a notation of whether the officer 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.

The final issue is whether the 2001 amendment to section 13730 imposes costs mandated by the state,[48] and whether any statutory exceptions listed in Government Code section 17556 apply to the claim. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny 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.

In the test claim exhibits,[49] claimant declares that it will incur costs in excess of $1,000 during the 2002-2003 fiscal year to implement the claim statutes.[50] Therefore, the Commission finds that section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes costs mandated by the state within the meaning of Government Code section 17514, and that no exceptions to reimbursement in Government Code section 17556 apply.

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[47] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[48] *Lucia Mar, supra,* 44 Cal.3d 830, 835; Government Code section 17514.

[49] Test Claim 02-TC-18, Exhibit 8, declaration of Bernice K. Abram, and Exhibit 9, declaration of Wendy Watanabe.

[50] Government Code section 17564.

such is not true with respect to parties involved in the incident or others who have a proper interest in the subject matter."[51]

Moreover, subdivision (f) of Government Code section 6254 requires the following:

> [S]tate and local law enforcement agencies shall make public the following information, 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:
>
> (1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description ..., the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, ... all charges the individual is being held upon ....
>
> (2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by an agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, ...

Because preexisting Government Code section 6254, subdivision (f), requires releasing the same information as the domestic violence incident report to persons who would be authorized representatives, the Commission finds that providing the report or face sheet to the authorized victim representative (as required by Fam. Code, § 6228) is not a new program or higher level of service within the meaning of article XIII B, section 6.

Family Code section 6228 differs from the Public Records Act in one major aspect. Under the Public Records Act, local governments may charge a fee to recover the costs of making the police report information available, whereas the test claim statute prohibits charging a fee for the information. Increased costs alone, however, without the test claim statute mandating a new program or higher level of service to the public does not require reimbursement under article XIII B, section 6.[52]

Accordingly, the Commission finds that Family Code section 6228 (Stats. 2002, ch. 377) does not constitute a new program or higher level of service for a local law enforcement agency to provide, without charging a fee, one copy of the domestic violence incident report face sheet, or one copy of the domestic violence incident report, or both, to the victim's representative, as defined, if the victim is deceased.

Therefore, the Commission finds that that Family Code section 6228, as amended (Stats. 2002, ch. 377) is not a reimbursable state mandated program within the meaning of article XIII B, section 6 and Government Code section 17514.

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

[52] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 877. *Kern High School Dist., supra,* 30 Cal.4th 727, 735.

(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 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. [Emphasis added.]

(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.

Because the plain language in subdivision (b) of the 1984 version is permissive as to taking custody of the firearm, the Commission finds that local agencies are not legally compelled to take custody of a firearm at the scene of a domestic violence incident involving a threat to human life or a physical assault. The Commission also finds that local agencies are not practically compelled to take custody of a firearm under those circumstances. The statute on its face does not impose "certain and severe penalties such as double taxation or other draconian consequences"[57] for not confiscating the firearm. And there is no evidence in the record that local agencies are practically compelled to confiscate the firearm. Rather, under the 1984 statute, taking a firearm at the scene of a domestic violence incident was a policy decision of the local agency. Therefore, the Commission finds that confiscating the firearm under the circumstances described in subdivision (b) of section 12028.5 (Stats. 1984, ch. 901) is not a state mandate.

As to the remaining downstream activities in the 1984 statute, the issue is whether they are state mandated (e.g., giving a receipt, holding the weapon for 48 to 72 hours, returning it to the owner if stolen, and final disposal if unclaimed) if the triggering event is not state mandated.

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[57] *Kern High School Dist., supra*, 30 Cal.4th 727, 751. In another part of the opinion, the court stated an example of practical compulsion as a substantial penalty (independent of the program funds at issue) for not complying with the statute. (*Id.* at p. 731).

within ~~72 hours~~ 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.

Subdivision (f) was amended to extend law enforcement deadlines as follows:

> In those cases ~~where~~ 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~~ 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 ~~60~~ 90 days of the date of seizure of the firearm or other deadly weapon.

Subdivision (h) was amended to lower the standard of proof required to prevent owners or possessors from recovering their firearms or weapons, as follows:

> 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~~ 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.

Subdivision (j) authorizes the owner or possessor to petition the court a second time if the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession. The 2002 amendment added the following:

> 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.

As a preliminary matter, the Commission finds that section 12028.5 constitutes a program within the meaning of article XIII B, section 6 because firearm or weapon confiscation is a

result in longer storage of the firearm or weapon, the storage is at the discretion of the local agency since nothing prevents making the firearm or weapon available within the 48 hours after seizure. Therefore, the Commission finds that this amendment does not mandate a new activity on a local agency within the meaning of article XIII B, section 6.

Extending the time to initiate a petition in court to determine if weapon should be returned: Subdivision (f) was amended by Statutes 2002, chapter 833 to extend law enforcement deadlines as follows:

> In those cases ~~where~~ 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~~ 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 ~~60~~ 90 days of the date of seizure of the firearm or other deadly weapon.

The Commission finds that the 2002 amendment increasing the time from 30 to 60 days to initiate a petition, and from 60 to 90 days if the court grants an extension to file the petition, does not mandate a new program or higher level of service because the amendment gives the local law enforcement agency *more* time than in preexisting law to initiate the petition, but does not require a new activity of a local agency.

Lowering the standard of evidence to deny returning the firearm or weapon: Subdivision (h) of section 12028.5 was amended by the test claim statute to lower the standard of proof required to prevent owners or possessors from recovering their firearms or weapons, as follows:

> 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~~ 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.

The Commission finds that the 2002 amendment does not mandate a new program or higher level of service. The amendment lowers the standard of proof from clear and convincing to a preponderance of the evidence that the local government is required to show in order to keep the firearm or weapon from being returned to the owner or person in lawful possession. This amendment does not, however, require a new activity of the local agency, or increase the level service for an existing activity. Therefore, the Commission finds that the 2002 amendment to subdivision (h) that lowers the standard of proof does not mandate a new program or higher level of service.

threat, nor did it require the local agency to pay attorney's fees on order of the court. Therefore, if the facts so dictate, the Commission finds that these activities are a new program or higher level of service if there is a petition for a second hearing for firearms or other deadly weapons confiscated in plain sight or during a consensual search.

2. Firearms or other deadly weapons taken during "other lawful searches"

Firearm or weapon seizure: The 2002 amendment to section 12028.5 (Stats. 2002, ch. 833, § 1.5) adds the following underlined text to subdivision (b):

> [Law enforcement officers] 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.

Sponsored by the City of Santa Rosa, the legislative history of this amendment indicates that its purpose was "to add any "lawful" search to the existing "plain sight or consensual" search required in domestic violence circumstances for the mandated seizure of firearms and weapons."[63] Adding "any lawful search" to the consensual or plain sight searches already in the statute means that firearm or weapon confiscation is now also required for searches incident to arrest, or of people the officer has legal cause to arrest,[64] or searches pursuant to a warrant, or searches based on statements of persons who do not have authority to consent but have indicated to law enforcement that a weapon is present at the scene.[65]

The Commission finds that the plain language of this subdivision mandates a law enforcement officer at a domestic violence scene involving a threat to human life or a physical assault to take temporary custody of any firearm or other deadly weapon during an "other lawful search" as necessary for the protection of the peace officer or other persons present (Pen. Code, § 12028.5, subd. (b)).

Adding "or other lawful search" to subdivision (b) also creates a new program or higher level of service by increasing the quantity of searches during which taking temporary custody of the weapon is required. Adding "other lawful search" to the statute means that firearm or weapon confiscation is now also required for searches incident to arrest, or of people the officer has legal cause to arrest,[66] or searches pursuant to a warrant, or searches based on statements of persons who do not have authority to consent but have indicated to law enforcement that a weapon is present at the scene.[67]

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[63] Senate Committee on Public Safety, Analysis of Sen. Bill No. 1807 (2001-2002 Reg. Sess.) as introduced, page 2.

[64] Penal Code section 833.

[65] Senate Committee on Public Safety, Analysis of Sen. Bill No. 1807 (2001-2002 Reg. Sess.) as introduced, page 6.

[66] Penal Code section 833.

[67] Senate Committee on Public Safety, Analysis of Sen. Bill No. 1807 (2001-2002 Reg. Sess.) as introduced, page 6.

of domestic violence incident, or it is retained because it was illegally possessed, or if the law enforcement agency files a petition to prevent returning the firearm or weapon because the agency has reasonable cause to believe the return would endanger the victim or person reporting the assault. The Commission finds that, based on the language in subdivision (b), it is a state mandate to make the firearm or other deadly weapon available to the owner or person who was in lawful possession between 48 hours and five business days after the seizure.

Preexisting law did not require holding firearms or other deadly weapons for weapons seized under section 12028.5 during other lawful searches.

The Commission finds, therefore, it is a new program or higher level of service for local law enforcement, for firearms or other deadly weapons confiscated during any other lawful search, to make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure (Pen. Code, § 12028.5, subd. (b)). This finding does not apply if the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident, or is retained because it was illegally possessed, or is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5.[70]

Return stolen firearm: Subdivision (d) of section 12028.5 requires any stolen firearm or other deadly weapon to be returned to its lawful owner, as soon as its use for evidence has been served, upon proof of ownership. The Commission finds that the plain language of subdivision (d) makes this provision a state mandate to return a stolen firearm.

Preexisting law, in Penal Code sections 1407 and 1408, requires stolen property in the custody of a peace officer to be returned to its owner "on the application of the owner and on satisfactory proof of his ownership of the property." More specifically, preexisting Penal Code section 12028, subdivisions (c) and (f) require returning a stolen firearm to its owner.

Because returning a stolen firearm or weapon to its owner is a preexisting duty of law enforcement, regardless of the type of search under which it is confiscated, the Commission finds that returning a stolen firearm or other deadly weapon to its owner is not a new program or higher level of service.

Dispose of firearm or weapon: Subdivision (e) of Penal Code section 12028.5 requires:

> Any firearm or other deadly weapon taken into custody and held by ...[law enforcement] for longer than 12 months and not recovered by the owner or person in lawful possession at the time it was taken into custody, shall be considered a

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[70] Subdivision (f) of section 12028.5 authorizes, within 60 days of seizure, the law enforcement agency to initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned in 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." This provision also requires notifying the owner.

within 60 days of the date of seizure (or 90 days if an extension is granted) to initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned.

Ex parte application: Subdivision (f) of section 12028.5 also states in part:

> 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.

The Department of Finance, in comments filed August 30, 2007, argues that the language that the local agency "may make an ex parte application stating good cause for an order extending the time to file a petition" in subdivision (f) is permissive and this is therefore not a state mandate.

The Commission finds that, based on its plain language, this ex parte application provision in subdivision (f) is discretionary and not a state mandate.

Notify owner: Subdivision (g) of section 12028.5 requires the law enforcement agency to 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. The agency is also required, if the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the agency, to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g). The Commission finds that the plain language of subdivision (g) requires these activities, so the owner notification and effort to learn the owner's whereabouts, as specified, impose a state mandate.

Preexisting law did not require these activities. Therefore, the Commission finds that it is a new program or higher level of service for firearms or other deadly weapons confiscated during any other lawful search, for a law enforcement agency to 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.

It is also a new program or higher level of service, for firearms or other deadly weapons confiscated during any other lawful search, if the owner or possessor whose firearm or other deadly weapon was seized does not reside at the last address provided to the law enforcement agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the owner or possessor and to comply with the notification requirements in subdivision (g) of section 12028.5.

Court hearing and attorney's fees: Subdivision (h) requires the court clerk, if the owner or possessor of the firearm or weapon requests a hearing, to set a hearing no later than 30 days from the receipt of the request, and requires the clerk to notify the owner or possessor, law enforcement agency, and district attorney of the date, time and place of the hearing. If the owner or possessor requests a hearing, the local agency must show by a preponderance of evidence that

firearm held by law enforcement for longer than 12 months and not recovered by the owner or possessor to be sold or destroyed, as specified.

The Commission disagrees. Under subdivision (f), the law enforcement agency has already "initiat[ed] a petition in superior court to determine if the firearm or other deadly weapon should be returned." And the required notice must include, according to subdivision (g), that "failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon." Also, under subdivision (e), "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." In other words, once the petition is filed, the court must make a decision regarding the firearm or weapon and it cannot simply be disposed of after 12 months. Thus, the Commission finds that subdivision (i) is a state mandate to file a petition for an order of default.

The Commission also finds that since filing a default petition was not previously required, it is a new program or higher level of service for any other lawful searches. Therefore, for firearms or other deadly weapons confiscated pursuant to any other lawful search, the Commission finds that it is a new program or higher level of service for local agencies, if the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not otherwise respond within 30 days of the receipt of the notice, to file a petition for an order of default. (Pen. Code, § 12028.5, subd. (i).)

As to disposal of the firearm or other deadly weapon, the permissive language in subdivision (i) indicates that the local agency is not required to do so. Although other statutes govern disposal of firearms or weapons (e.g., Pen. Code, §§ 12032 or 12028) the Commission finds that the test claim statute does not require a local agency to dispose of them.

Petition for second hearing, dispose of firearm or weapon, attorney's fees: Subdivision (j) authorizes the person (owner) to petition the court a second time if the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession. Subdivision (j) requires the court to award reasonable attorney's fees to the prevailing party.

In the analysis above of subdivision (h), the Commission found that this provision is a new program or higher level of service, if there is a petition for a second hearing, to show 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, and to pay attorney's fees to the prevailing party upon the order of the court. The same reasoning applies here.

Therefore, if there is a petition for a second hearing for firearms or other deadly weapons confiscated during any other lawful search, it is a mandated new program or higher level of service to show 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, and to pay attorney's fees to the prevailing party upon the order of the court.

Subdivision (j) also authorizes law enforcement to dispose of the firearm or weapon if the person does not petition the court or is unsuccessful at the second hearing in gaining the return of the firearm or other deadly weapon. Because the language regarding disposal of the firearm or weapon is permissive, the Commission finds that disposing of the firearm or weapon is not a state mandate.

CONCLUSION

In sum, the Commission finds that effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance:

- To include on the domestic violence incident report form 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 (Pen. Code, § 13730, subd. (c)(3).

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the activities listed below are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (3) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

- To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
- To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
- To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5.[76] (Pen. Code, § 12028.5, subd. (b).)

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[76] Subdivision (f) of section 12028.5 authorizes, within 60 days of seizure, the law enforcement agency to initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned in cases "in which a law enforcement agency has reasonable cause to believe

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the following activities are a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for local agencies, when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search.

- The one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
- If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing 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. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

The Commission also finds that Family Code section 6228 (Stats. 2002, ch. 377) and Penal Code section 12028.5 (Stats. 1984, ch. 901 & Stats. 2002, ch 830)[78] are not a reimbursable state mandated program within the meaning of article XIII B, section 6 and Government Code section 17514 because they do not mandate a new program or higher level of service.

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[78] Statutes 2002, chapter 833 was double joined to Statutes. 2002, chapter 830, but only chapter 833 amended section 12028.5 because it was chaptered last (Gov. Code, § 9605).

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
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Exhibit C

February 15, 2008

Ms. Juliana Gmur
MAXIMUS
2380 Houston Ave
Clovis, CA 93611

Ms. Nancy Gust
County of Sacramento
711 G Street
Sacramento, CA 95814

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

RE: Draft Staff Analysis and Hearing Date
Crime Statistic Reports for the Department of Justice, 02-TC-04, 02-TC-11
Statutes 1980, Chapter 1340 (SB 1447); Statutes 1982, Chapter 147 (SCR 64); Statutes 1984, Chapter 1609 (SB 1472); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1995, Chapters 803 and 965 (AB 488 and SB 132); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); Statutes 2000, Chapter 626 (AB 715); Statutes 2001, Chapters 468 and 483 (SB 314 and AB 469); and
California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements and Requirements Spreadsheet, March 2000
City of Newport Beach and County of Sacramento, Claimants

Dear Ms. Gmur and Ms. Gust:

The draft staff analysis of this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Friday, **March 7, 2008**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing on Friday, **March 28, 2008** at 9:30 a.m. in Room 447 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about March 14, 2008. 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, subdivision (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 Eric Feller at (916) 323-356 2 if you have questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure: Draft Staff Analysis

J:mandates/2004/tc/02to04/dsatrans

ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS

Penal Code Sections 12025, 12031, 13012, 13014, 13023 and 13730
Statutes 1980, Chapter 1340 (SB 1447); Statutes 1982, Resolution Chapter 147 (SCR 64); Statutes 1984, Chapter 1609 (SB 1472); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1995, Chapters 803 and 965 (AB 488 and SB 132); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); Statutes 2000, Chapter 626 (AB 715); Statutes 2001, Chapters 468 and 483 (SB 314 and AB 469); and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements and Requirements Spreadsheet, March 2000

Crime Statistics Reports for the Department of Justice
02-TC-04 & 02-TC-11

City of Newport Beach and County of Sacramento, Claimants

EXECUTIVE SUMMARY

The test claim consists of statutes and an alleged executive order that address reporting various crime statistics by local agencies to the California Department of Justice (DOJ). The crime statistics in the test claim legislation involve citizen complaints, juvenile justice, homicide, hate crimes, carrying loaded and concealed firearms, domestic violence, and the number of victims of violent crime who are aged 60 or older.

For the reasons discussed in the analysis below, staff finds that, beginning July 1, 2001, the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, §13014).
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, §13023).

- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. Staff finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

Staff also finds that all other test claim statutes and alleged executive order do not constitute a reimbursable state-mandated program. Neither Penal Code section 13012, nor the "Criminal Statistics Reporting Requirements" and "Requirements Spreadsheet" (March 2000), impose state-mandated requirements on local agencies or school districts.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

STAFF ANALYSIS

Claimants

City of Newport Beach and County of Sacramento

Chronology

9/06/02	Claimant City of Newoprt Beach files test claim 02-TC-04
10/24/02	Department of Finance files comments on 02-TC-04
10/25/02	Department of Justice requests extension of time to file comments on 02-TC-04
11/22/02	County of Sacramento files test claim 02-TC-11
1/28/03	Department of Justice files comments on test claim 02-TC-04
3/7/03	Claimants request extension to file rebuttal comments on 02-TC-04 & 02-TC-11 and request consolidation of test claims
3/13/03	Claimant files rebuttal comments on 02-TC-04 and 02-TC-11
9/26/07	Commission staff consolidates test claims 02-TC-04 and 02-TC-11
2/15/08	Commission staff issues draft staff analysis

Background

This test claim alleges crime statistics reporting activities that are required of, depending on the type of report, city and county law enforcement agencies, county probation departments, and district attorneys.

The Uniform Crime Reporting (UCR) Program is a city, county and state law enforcement program that provides a nationwide view of crime based on the submission of statistics by law enforcement agencies throughout the country. The crime data are submitted either to a state UCR Program or directly to the national UCR Program, administered by the Federal Bureau of Investigation (FBI). The International Association of Chiefs of Police (IACP) envisioned the need for statistics on crime in the 1920s. The IACP's Committee on Uniform Crime Records is a voluntary national data collection effort begun in 1930. Crime data are, for the most part, collected monthly by the UCR Program. The FBI provides report forms, tally sheets, and self-addressed envelopes to agencies that complete the forms and return them directly to the FBI.

In 1955, California enacted laws requiring the state's participation in the UCR Program. At the same time, it authorized and directed the California DOJ to collect, maintain and analyze criminal statistics beyond the scope of the UCR Program.

Penal Code section 13010[1] requires DOJ to collect from state and local entities, on forms developed by DOJ, data necessary for the "work of the department." (Department is used in the statutes to mean DOJ.) Penal Code section 13010 also provides that DOJ shall: (1) recommend the form and content of records to be maintained by the state and local entities; (2) instruct them

[1] All references are to the Penal Code unless otherwise indicated.

in the installation, maintenance and use of such records; (3) process, tabulate, analyze and interpret the data collected; (4) supply data to the FBI and others engaged in the collection of national criminal statistics; (5) present to the Governor an annual report containing the criminal statistics of the preceding calendar year; and (6) present at such other times as the Attorney General may approve reports on special aspects of criminal statistics (Pen. Code, § 13010, subs. (c) – (g)).

Since 1955 Penal Code section 13020 has imposed a duty on city marshals, chiefs of police, district attorneys, city attorneys, city prosecutors having criminal jurisdiction, probation officers and others, including

> [E]very other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:
> (a) To install and maintain records needed for the correct reporting of statistical data required by him or her.
> (b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.
> (c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title. (Pen. Code, § 13020.)

Since 1955, cities and counties have had the obligation to provide DOJ with criminal statistics used in the UCR Program, as well as those needed for the annual report to the Governor and other reports on special aspects of criminal statistics.

Test Claim Statutes

Annual DOJ report to the Governor: Penal Code section 13012 requires DOJ's annual report to the Governor to contain specified data. It was amended in 1980 to require inclusion of "the number of citizens' complaints received by law enforcement agencies under Section 832.5..." (Stats. 1980, ch. 1340, eff. Sept. 30, 1980.)

Subdivision (c) of section 13012 was amended in 1995 to add the following underlined provision: "The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents." It was amended again by Statutes 2001, chapter 486 to add the following subdivision (e):

> (e) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject to a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

Homicide reports: Penal Code section 13014 requires DOJ to collect information on all homicide victims and persons charged with homicides, to adopt and distribute homicide reporting forms and to compile the reported homicide information and annually publish a report about it. Subdivision (b) states: "Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic

information about the victim and the person or persons charged with the crime." (Stats. 1992, ch. 1338.)

Hate crime reports: Penal Code section 13023, as originally enacted in 1989, provided:

> Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability. (Stats. 1989, ch. 1172.)

Section 13023 also requires DOJ to file annual reports on the hate crime data. Statutes 1998, chapter 933 added the requirement to include 'gender' to the victim characteristics, and Statutes 2000, chapter 626 added 'national origin' to the victim characteristics.

Concealed and loaded firearms reports: Penal Code section 12025 defines when a person is guilty of carrying a concealed firearm, defines punishments for doing so, states a minimum sentence with exceptions, and defines lawful possession of the firearm. It was amended by Statutes 1999, chapter 571 to add a reporting provision in subdivision (h) as follows:

> (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.
> (2) The Attorney General shall submit annually a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).
> (3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

Similarly, section 12031 defines when a person is guilty of carrying a loaded firearm in a public place, and when a person is not guilty of doing so. It was amended by Statutes 1999, chapter 571 to add a reporting provision in subdivision (m) as follows:

> (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.
> (2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).
> (3) This subdivision shall remain operative only until January 1, 2005.

Domestic violence reports: Penal Code section 13730 requires local law enforcement agencies to develop a system for recording all domestic violence-related calls for assistance. Enacted by Statutes 1984, chapter 1609, subdivision (a) requires each law enforcement agency to develop a system for recording all domestic violence-related calls for assistance, including whether weapons are involved. Subdivision (b) requires the Attorney General to report annually to the

Governor and Legislature on the total number of domestic violence-related calls received by California law enforcement agencies. Subdivision (c) requires law enforcement agencies to develop a domestic violence incident report form for the domestic violence calls, with specified content. It also requires written reports for domestic-violence related calls for assistance.

The Legislature amended subdivision (a) (Stats. 1993, ch. 1230) to state that "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."

Reports for crime victims age 60 or older: Senate Resolution No. 64 (Stats. 1982, ch. 147) states in relevant part:

> Resolved by the Senate of the State of California, the Assembly thereof concurring,
> That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older; and be it further Resolved,
> That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages and victims of crime and to incorporate that information in its crime statistic reporting system...

Criminal Justice Statistics Center Documents: Also included in the claim is the "Criminal Justice Reporting Requirements" (March 2000) and the "Criminal Statistics Reporting Requirements Spreadsheet" both promulgated by the Department of Justice, Criminal Justice Statistics Center. The introduction to the Reporting Requirements (former) document states:

> This document provides general guidelines to law enforcement agencies, District Attorneys, Public Defenders, and Probation Departments regarding their reporting requirements to the Department of Justice's Criminal Justice Statistics Center (CJSC). For each reporting requirement there is a brief description of what data is collected (introduction), which agencies are required to report the data (who), the code sections(s) that require reporting (why), the due date of the report (when), and the form or alternative method required to be used to report the data (how).

The Table of Contents of this document has sections on arrests, crimes and clearances, arson offenses, homicides, hate crimes, law enforcement officers killed or assaulted, domestic violence related calls for assistance, violent crimes committed against senior citizens, death in custody, adult probation, juvenile court and probation statistical system, concealable weapons statistical system, hate crime prosecution survey, law enforcement and criminal justice personnel survey, and citizens' complaints against peace officers survey.

The spreadsheet has rows for each of the categories in the Table of Contents above, and columns indicating the reporting agency, reporting frequency, statutory authority, reporting form, and whether electronic reporting is available for each crime or category.

Related Commission Decisions

The Commission has issued four decisions on various versions of Penal Code section 13730 regarding domestic violence reports, as follows.

***Domestic Violence Information*, CSM 4222:** In 1987, the Commission approved this test claim on Penal Code section 13730, as added by Statutes 1984, chapter 1609. The parameters and guidelines for *Domestic Violence Information* authorize 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 suspended Penal Code section 13730 (as added by Stats. 1984, ch. 1609) pursuant to Government Code section 17581. Suspending a statute means the Legislature assigns a zero-dollar appropriation to the program and makes it optional.

***Domestic Violence Training and Incident Reporting*, CSM 96-362-01:** In February 1998, the Commission considered this test claim on the 1995 amendment to Penal Code section 13730, subdivision (c) (Stats. 1995, ch. 965). This amendment requires law enforcement agencies to include in the domestic violence incident report information relating to the use of alcohol or controlled substances by the alleged abuser, and any prior domestic violence responses to the same address.

The Commission determined 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 optional, so 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 language of the suspension statute (Gov. Code, § 17581), the Commission determined, however, that during periods when the state operates without a budget, the original suspension of the mandate would not be in effect. Thus, for the 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 17581, the Commission determined the activities required by the 1995 amendment to Penal Code section 13730 are reimbursable.

In 1998, Government Code section 17581 was amended[2] to close the gap and continue the suspension of programs during periods when the state operates without a budget. The *Domestic*

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[2] 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.)

Violence Information and Incident Reporting program has been suspended in every Budget Act since 1992 except for 2003-2004.[3]

***Crime Victims' Domestic Violence Incident Reports*, 99-TC-08:** This claim was decided by Commission on May 29, 2003 (corrected decision issued in September 2003). The Commission found it had no jurisdiction over Penal Code section 13730 (Stats. 1984, ch. 1609, Stats. 1995, ch. 965) because it had already adjudicated the statute in CSM 4222, *Domestic Violence Information*, and in CSM 96-362-01, *Domestic Violence Training and Incident Reporting*. The Commission also found that the mandate had been suspended by the Legislature every year since 1992-1993, making the activities discretionary on the part of local government.

***Crime Victims' Domestic Violence Incident Reports II*, 02-TC-18:** This claim, originally submitted as an amendment to (and severed from) test claim 99-TC-08, was adopted September 27, 2007. The Commission found that effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program for local agencies, on all domestic violence-related calls for assistance, to include on the domestic violence incident report form 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 (Pen. Code, § 13730, subd. (c)(3)).

The Commission noted in the analysis that no test claim had been filed on section 13730 as amended by Statutes 1993, chapter 1230, which added to subdivision (a) "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."

Claimants' Position

Claimants City of Newport Beach and County of Sacramento seek reimbursement based on article XIII B, section 6 of the California Constitution for criminal statistics reporting duties. The test claims do not contain specific activities beyond quoting the language of the test claim statutes. Both test claims estimate that the costs will substantially exceed $1000.00 per year.

Claimant submitted comments in March 2003, rebutting those of the Department of Finance and DOJ. Regarding DOJ's comment about the city claimant claiming costs for county entities,

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[3] 2007-2008 Budget Act (Stats. 2007, chs. 171 & 172) Item 8885-295-0001, Schedule (3)(aa); 2006-2007 Budget Act (Stats. 2006, chs. 46 & 47) Item 8885-295-0001, Schedule (3) (aa); 2005-2006 Budget Act (Stats. 2005, chs. 38 & 39) Item 8885-295-0001, Schedule (3) (hh); 2004-2005 Budget Act (Stats. 2004, ch. 208) Item 9210-295-0001, Provision 3, Schedule (5); 2002-2003 Budget Act (Stats. 2002, ch. 379), Item 9210-295-0001, Provision 3, Schedule (8); 2001-2002 Budget Act (Stats. 2001, ch. 106), Item 210-295-0001, Provision 3, Schedule (8); 2000-2001 Budget Act (Stats. 2000, ch. 52), Item 210-295-0001, Provision 3, Schedule (8); 1999-2000 Budget Act (Stats. 1999, ch. 50), Item 210-295-0001, Provision 2, Schedule (8).

claimant notes that the claim has been joined by County of Sacramento. Claimant made other substantive comments that are discussed in the analysis below.

State Agency Positions

Department of Justice: In comments submitted in January 2003, the DOJ's Criminal Justice Statistics Center commented on each test claim statute individually. DOJ stated that the reports in the test claim statutes that are "required" are in Penal Code sections 13012 (citizen complaints and juvenile offender information), 13023 (hate crimes), 12025 (concealed firearms) and 12031 (loaded firearms in a public place).

As to domestic violence reports (§ 13730), DOJ commented that its report has not changed since 1986, and that the amendments to section 13730 relate to local law enforcement's internal documentation that have nothing to do with DOJ reporting requirements.

Regarding homicide reporting in section 13014, DOJ states that the statute did not add new requirements because the same demographic information has been required since at least 1975, and that no additional information was required as a result of Penal Code section 13014. As to reporting on victims of violent crimes who are 60 years of age or older, DOJ states that the Legislature did not mandate local law enforcement to report this information.

For some activities imposed on county district attorneys or county probation officers, DOJ states that "the City of Newport Beach has not explained how it is responsible for costs associated with this reporting requirement."

DOJ's comments are discussed in more detail in the analysis.

Department of Finance: In its October 2002 comments, Finance states that except for one test claim statute, the statutes "may have resulted in a new higher level of service as a result of requiring local law enforcement agencies to keep statistical data on the frequency, types and nature of criminal offenses, in addition to requiring these agencies to submit this data to the Department of Justice."

As to Penal Code section 13730, Finance states that the Commission has previously determined it to be a state-mandated program and it was subsequently suspended by the Legislature (Gov. Code, § 17581). Regarding this statute, Finance states:

> Chapter 483, Statutes of 2001 [amending Pen. Code, § 13730] would add an additional requirement to the existing mandate. However, since the mandate is suspended, implementation would be at the option of local government. This interpretation is consistent with a decision adopted by the Commission ... on January 29, 1998, [*Domestic Violence Training and Incident Reporting*, CSM 96-362-01] regarding earlier changes to the same code section. Therefore it does not seem appropriate to include references to these chapters as a part of this claim.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[4] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[5] "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 because of the taxing and spending limitations that articles XIII A and XIII B impose."[6] 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.[7]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[8]

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.[9] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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[4] Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[5] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[6] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

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

[8] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[9] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

legislation.[10] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[11]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[12]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[13] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[14]

Each statute is discussed separately to determine whether it is a reimbursable state-mandate.

I. Do the test claim statutes or alleged executive orders impose a reimbursable state-mandated program within the meaning of article XIII B, section 6?

As a preliminary matter, staff finds that the test claim statutes constitute a program within the meaning of article XIII B, section 6 because they carry out the governmental function of providing a service to the public[15] by collecting information for DOJ to report criminal statistics, and because reporting the data is an activity that is unique to local government.

Annual DOJ Report to the Governor - Penal Code section 13012

Penal Code section 13012 requires DOJ's annual report to contain specified data. Section 13012 was amended by Statutes 1980, chapter 1340 (eff. Sept. 30, 1980) to require inclusion of "the number of citizens' complaints received by law enforcement agencies under Section 832.5."

Subdivision (c) of section 13012 was amended in 1995 (ch. 803) to add the following underlined provision: "The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, <u>including those in the juvenile justice system,</u> in dealing with criminals or delinquents." It was amended again by Statutes 2001, chapter 486 to add the following subdivision (e):

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[10] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[11] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[12] *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 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[13] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[14] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

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

(e) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including those in the juvenile justice system, in dealing with minors who are the subject to a petition or hearing in the juvenile court to transfer their case to the jurisdiction of an adult criminal court or whose cases are directly filed or otherwise initiated in an adult criminal court.

Section 13012 by itself only specifies the content of a DOJ report, not a report by a local agency. It refers to the "annual report of the department provided for in Section 13010..." Section 13010 states: "It shall be the duty of the department [of Justice]: (a) To collect data necessary for the department from all persons and agencies mentioned in Section 13020 and from any other appropriate source;" Section 13020, in turn, requires the local agency reports. Section 13020 was not pled by claimant, nor was section 13010. Nor are these sections incorporated by reference into section 13012, the test claim statute. For these reasons, the Commission has no jurisdiction to make determinations on sections 13010 and 13020.[16]

Therefore, the Commission finds that section 13012, by itself, does not impose a state-mandated activity on a local government, and therefore it is not a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

The next issue is whether there is a state mandate to report the citizen complaint and juvenile justice data based on the "Criminal Statistics Reporting Requirements" and "Requirements Spreadsheet" (March 2000) promulgated by the California Department of Justice, Criminal Justice Statistics Center (CJSC). These CJSC documents were pled by claimant in the test claim.

The Commission only has jurisdiction over statutes and executive orders (Gov. Code, §§ 17551 & 17514). Thus, the issue is whether the CJSC documents are executive orders within the meaning of Government Code section 17516. This section defines an executive order as: "any order, plan, requirement, rule, or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government."

The "Criminal Statistics Reporting Requirements" document states, under the first "Introduction:"

> This document provides general guidelines to law enforcement agencies, District Attorneys, Public Defenders, and Probation Departments regarding their reporting requirements to the Department of Justice's Criminal Justice Statistics Center (CJSC). For each reporting requirement there is a brief description of what data is collected (introduction), which agencies are required to report the data (who), the code sections(s) that require reporting (why), the due date of the report (when), and the form or alternative method required to be used to report the data (how).

Under the heading "Citizen Complaints against Peace Officers Survey" there is another introduction that states: "Agencies are to report to DOJ statewide summary information on the number of non-criminal and criminal (misdemeanor and felony) complaints reported by citizens

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[16] Sections 13010 and 13012 were enacted before 1975 and therefore are not subject to article XIII B, section 6, subdivision (a)(3) of the California Constitution.

to law enforcement agencies, and the number of complaints that were sustained." Under the heading "Why," only Penal Code section 13012 is quoted.

The Spreadsheet also imposes no requirements, but contains descriptions of the statutory reporting requirements.

Therefore, even if the Commission were to find that the CJSC documents are executive orders within the meaning of Government Code section 17516, the documents still do not mandate the reporting of the citizen complaint information by local agencies. The language used in the document is not mandatory, as it refers to itself as "general guidelines." Therefore, the CJSC documents are not executive orders within the meaning of Government Code section 17516. Also, the CJSC document only references section 13012 for citizen complaints, the statute that specifies the content of DOJ's report. There is no reference to section 13020's local agency reporting requirement in the CJSC document.

As for reporting juvenile justice data, the CJSC document states as follows, under the heading "Juvenile Court and Probation Statistical System:" "Juvenile justice data is to be reported to DOJ to provide information on the administration of juvenile justice in California. Information is collected on a juvenile's progress through the juvenile justice system from probation intake to final case disposition." Under the "Why" portion under juvenile justice, Penal Code section 13020 and Welfare and Institutions Code section 285 are quoted, neither of which are test claim statutes.

There is no other pleading or evidence in the record, such as a letter to law enforcement agencies from DOJ, requiring them to provide statistics for citizen complaints or juvenile justice data.

Thus, staff finds that Penal Code section 13012 and the "Criminal Statistics Reporting Requirements" and Requirements Spreadsheet (March 2000), do not impose state-mandated activities on local agencies to report citizen complaints against peace officers and juvenile justice data to the DOJ, and therefore reimbursement is not required pursuant to article XIII B, section 6 of the California Constitution.

Homicide Reports - Penal Code section 13014

Section 13014 was added by Statutes 1992, chapter 1338. Subdivision (b) of this section states: "Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime."

Subdivision (a) of section 13014 requires the DOJ to collect information on all homicide victims and persons charged with homicides. It also requires DOJ to adopt and distribute homicide reporting forms, and requires the department to compile the reported homicide information and annually publish a report about it.

Based on the plain meaning of the statute, staff finds that this section 13014, subdivision (b), imposes a state mandate on local law enforcement agencies that are "responsible for the investigation and prosecution of a homicide case" to report to the DOJ the specified data.

The next issue is whether this reporting is a new program or higher level of service. DOJ states, in comments submitted in January 2003, that section 13014 did not enact anything new because

the demographic information it describes was already included on the Supplementary Homicide Report provided to the local entities by the DOJ. DOJ attached a report form with a revision date of July 11, 1975, to "demonstrate that the same demographic information has been required since at least 1975, and that no additional information was required as a result of the addition of Penal Code section 13014."

Claimant, in rebuttal comments submitted in March 2003, argues that "there is no state-mandate until the Legislature creates one." Claimant asserts that

> [T]his reporting was optional at the direction of the DOJ, who could have changed its reporting requirements at any time. Nor does it change the fact that such reporting is no longer option [sic] in light of the current statutes. Now, neither the local entities nor the DOJ itself can opt not to report that which is required by law. The simple fact that the DOJ has been conscientious about devising its crime statistic reports and has ultimately foreseen the direction of the Legislature, does not defeat the existence of current state mandate [sic] and the constitutional guarantee for reimbursement of costs for local agencies.

The issue is whether the requirement to report homicides existed before the enactment of section 13014 (Stats. 1992, ch. 1338). Staff finds there is insufficient evidence that it did.

The legislative history of section 13014 indicates that "Under current law [¶]...[¶] The Department of Justice is not required by statute to maintain data pertaining to victims of homicide and persons charged with homicide."[17] This statement in the legislative history suggests that reporting the homicide data is a new program or higher level of service.

State mandates are created by either a statute or an executive order (Gov. Code, §§ 17551, subd. (a) & 17514). If DOJ did not require reporting homicide data under the authority of a statute before the test claim statute, then it may have done so under the authority of an executive order, defined as "any order, plan, requirement, rule, or regulation issued by [¶]...[¶] any agency, department, board, or commission of state government." (Gov. Code, § 17516).

There is no evidence of an executive order requiring homicide reports. The form provided by DOJ in its comments only shows that DOJ collected homicide information, but not that local agencies were required to provide it. In fact, the form DOJ submitted with its comments states: "In view of the importance of the homicide classification in crime reporting, it is *requested* that the following supplementary report be filled in and transmitted ..."[18] [Emphasis added.] Since the form uses the non-mandatory language "it is requested that ...." staff finds that reporting this homicide information prior to the test claim statute was not mandatory for local agencies.

Consequently, staff finds that the requirement to provide homicide information as specified in section 13014 is a new program or higher level of service.

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[17] Senate Third Reading analysis of Senate Bill No. 1182 (1991-1992 Reg. Sess.) as amended August 28, 1992, p. 1.

[18] Comments from the Department of Justice on Test Claim 02-TC-04, January 28, 2003, Exhibit B.

Staff also finds that this data collection imposes costs mandated by the state within the meaning of Government Code section 17514. Government Code section 17556 provides that the Commission shall not find costs mandated by the state if certain conditions apply. Staff finds that no exceptions in Government Code 17556 apply to Penal Code section 13014.

Therefore, staff finds that Penal Code section 13014 is a reimbursable mandate for a local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background, beginning July 1, 2001 (the beginning of the reimbursement period for this test claim).

Hate Crime Reports - Penal Code section 13023

As originally enacted (Stats. 1989, ch. 1172) this section stated:

> Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability.

The section also requires DOJ to file annual reports to the Legislature on the hate crime data. Statutes 1998, chapter 933 added the requirement to include 'gender' to the victim characteristics, and Statutes 2000, chapter 626 added 'national origin' to the victim characteristics.

The plain language of this statute requires the Attorney General to "direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information ..."

However, the requirement is contingent on funding, as it reads "subject to the availability of adequate funding, the Attorney General shall direct..." The funding in the statute, however, is allocated to the Attorney General, not local entities. In its comments on the test claim, the Attorney General's Office stated that "[a]lthough the hate crime legislation passed in 1989, because of a lack of funding, the DOJ did not begin collecting data until 1994." This indicates that the funding was allocated to the Attorney General's office to collect the data, not on the local agencies to report it.

Therefore, based on the mandatory language in the statute that gives neither DOJ nor local agencies discretion to refuse to comply, staff finds that it is a state mandate for local law enforcement agencies to report to DOJ any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage, where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, gender, national origin, or physical or mental disability.

Since this reporting was not required before the test claim statute, staff also finds that it is a new program or higher level of service.

Staff also finds that section 13023 imposes costs mandated by the state within the meaning of Government Code section 17514, and no exceptions in Government Code section 17556 apply.

Therefore, staff finds that Penal Code section 13023 is a reimbursable state-mandated program for local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin, beginning July 1, 2001 (the beginning of the reimbursement period for this test claim).

Concealed and Loaded Firearms Reports – Penal Code sections 12025 & 12031

Section 12025 defines when a person is guilty of carrying a concealed firearm, defines punishments for doing so, states a minimum sentence with exceptions, and defines lawful possession of the firearm. It was amended by Statutes 1999, chapter 571 to add a reporting provision in subdivision (h) as follows:

> (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.
> [¶]...[¶]
> (3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

Similarly, section 12031 defines when a person is guilty of carrying a loaded firearm in a public place, and when a person is not guilty of doing so. It was amended by Statutes 1999, chapter 571 to add a reporting provision in subdivision (m) as follows:

> (1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.
> [¶]...[¶]
> (3) This subdivision shall remain operative only until January 1, 2005.

Based on the mandatory language in sections 12025, subdivision (h)(1) and 12031, subdivision (m)(1), staff finds that these sections impose state mandates for the district attorney to submit the reports as specified.

These reports were not required before enactment of the test claim legislation, so staff also finds that they are a new program or higher level of service.

And staff also finds that the reporting requirements in sections 12025 and 12031 impose costs on district attorneys that are mandated by the state within the meaning of Government Code section 17514, and that no exceptions in Government Code section 17556 apply.

Therefore, staff finds that it is a reimbursable state-mandated program for district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. Staff finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period) until January 1, 2005, the statutory sunset date. (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3).)

Domestic Violence Reports – Penal Code section 13730

Section 13730 has been amended various times since being enacted (Stats. 1984, ch. 1609, Stats, 1993, ch. 1230, Stats. 1995, ch. 965, and Stats. 2001, ch. 483). As indicated above in the background, under the descriptions of prior Commission decisions, the Commission has made determinations on all these amendments to section 13730 except for Statutes 1993, chapter 1230.

Based on these prior determinations, staff finds that the Commission does not have jurisdiction over the other amended versions (i.e., the 1984, 1995 & 2001 amendments) of section 13730. An administrative agency does not have jurisdiction to rehear a decision that has become final.[19]

Statutes 1993, chapter 1230 added the following to subdivision (a) of section 13730: "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."

In its comments on the test claim, Finance states:

> Chapter 483, Statutes of 2001 [amending Pen. Code, § 13730] would add an additional requirement to the existing mandate. However, since the mandate is suspended, implementation would be at the option of local government. This interpretation is consistent with a decision adopted by the Commission ... on January 29, 1998, [*Domestic violence Training and Incident Reporting*, CSM 96-362-01] regarding earlier changes to the same code section. Therefore it does not seem appropriate to include references to these chapters as apart of this claim.

Staff disagrees. In order to be suspended by the Legislature, a statute must have "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..." (Gov. Code, § 17581.)

This 1993 amendment to section 13730 has never been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring local agency reimbursement, as required by Government Code section 17581. Therefore, the 1993 amendment is not eligible for suspension by the Legislature.

Thus, based on the mandatory language in the statute, staff finds that section 13730, as amended by Statutes 1993, chapter 1230, imposes a state mandate on local law enforcement agencies to support domestic violence related calls for assistance with a written incident report.

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[19] *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

The next issue is whether it is a new program or higher level of service. Preexisting law, before the 1993 amendment, had been suspended and made voluntary every year beginning fiscal year 1992-1993 (pursuant to Gov. Code, § 17581) as indicated above. Moreover, preexisting law states:

> Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident (Pen. Code, § 13730, subd. (c)).

Preexisting law only requires incident reports for "incidents of domestic violence" whereas the 1993 amendment appears to broaden this requirement to require written incident reports for "calls for assistance." Therefore, staff finds that the 1993 amendment is a new program or higher level of service.

Staff also finds that there are costs mandated by the state, as defined by Government Code section 17514, for this mandate, and that no exceptions to reimbursement in Government Code section 17556 apply.

Therefore, staff finds that it is a reimbursable state-mandated program for local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report, beginning July 1, 2001 (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

Crime reports for persons age 60 or older - Senate Resolution No. 64 (Stats. 1982, ch. 147)

This senate resolution states in relevant part:

> Resolved by the Senate of the State of California, the Assembly thereof concurring,
> That local law enforcement officials are requested to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older; and be it further Resolved,
> That the Department of Justice is requested to solicit and collect information from local law enforcement agencies concerning the ages and victims of crime and to incorporate that information in its crime statistic reporting system...

Staff finds that this resolution is not a mandate within the meaning of article XIII B, section 6 of the California Constitution. First, it "requests" but does not mandate that the victim information be provided, a fact pointed out by DOJ in its comments submitted on the test claim (and the form it promulgates to local agencies also "request" the information). Second, the California Supreme Court has held that legislative resolutions do not have the force of law.[20]

Therefore, staff finds that Senate Resolution No. 64 (Stats. 1982, ch. 147) is not a state mandate within the meaning of article XIII B, section 6 of the California Constitution.

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[20] *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 709.

CONCLUSION

For the reasons discussed above, staff finds that, beginning July 1, 2001, the test claim statutes cited below impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, §13014).
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, §13023).
- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. Staff finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

Staff also finds that all other test claim statutes and alleged executive order do not constitute a reimbursable state-mandated program. Neither Penal Code section 13012, nor the "Criminal Statistics Reporting Requirements" and "Requirements Spreadsheet" (March 2000), impose state-mandated requirements on local agencies or school districts.

Recommendation

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

Commission on State Mandates

Original List Date: 9/27/2001
Last Updated: 7/19/2006
List Print Date: 02/15/2008
Claim Number: 02-TC-04
Issue: Crime Statistic Reports for Department of Justice

Mailing Information: Draft Staff Analysis

Mailing List

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Exhibit D

SENATE THIRD READING

SB 1184 (Presley) - As Amended: August 28, 1992

SENATE VOTE: 26-5

ASSEMBLY ACTIONS:

COMMITTEE	PUB. S.	VOTE 4-2	COMMITTEE W. & M. VOTE 21-0
Ayes:	Burton, Bates, Lee, Umberg	Ayes:	
Nays:	Bentley, Boland	Nays:	

DIGEST

Under current law:

1) The Serious Sexual Offender Program is a pilot project, due to sunset July 1, 1994, in the Counties of San Francisco, San Mateo, Santa Clara, Santa Cruz, Alameda, Contra Costa, Napa, Sonoma, Solano, and Marin, funded by an additional fine of $100 to $200 assessed on specified sex offenders.

2) Persons convicted of specified sex offenses, or of specified assault or battery offenses, may be required to provide blood and saliva samples, as specified, which will be subject to DNA analysis by the Department of Justice, the results of which are to be maintained in a computerized data bank and used for law enforcement purposes.

3) The state maintains a child abuse report index, information from which is available to the State Department of Social Services, or any county licensing agency, concerning applicants for licensure or employment related to residential care facilities for children.

4) The Department of Justice is not required by statute to maintain data pertaining to victims of homicide and persons charged with homicide.

This bill:

1) Creates a new, statewide Services Habitual Offender Program (SHOP) to be funded in part out of the monies currently used to fund the SHOP pilot program.

2) Institutes a new fee, of up to $15, to be charged to any applicant for information from the child abuse index, to be used to fund SHOP and existing DNA analysis and file maintenance.

3) Requires the Department of Justice to compile and maintain demographic data regarding murder victims and persons charge with murder.

4) Incorporates language contained in AB 92 (Moore) to avoid chaptering out.

- continued -

FISCAL EFFECT

Unknown

COMMENT

According to legislative intent language in the bill, the purpose of this bill is "to support the efforts of the criminal justice community through a focused effort by law enforcement and prosecuting agencies to identify, locate, apprehend, and prosecute sexual habitual offenders."

Paul M. Gerowitz
445-3268
apubs

Heap v. City of Los Angeles
Cal.

GEORGE A. HEAP, Appellant,
v.
CITY OF LOS ANGELES (a Municipal Corporation) et al., Respondents.
L. A. No. 15470.

Supreme Court of California
May 21, 1936.

HEADNOTES

(1) Municipal Corporations--Civil Service--Discharge of Employee--Reexamination--Jurisdiction.
Under the Los Angeles City charter, providing for an investigation of the grounds for discharge of a civil service employee by the board of civil service commissioners, the jurisdiction of the commission is a special and limited one; and when it has acted upon an application of the discharged employee for investigation of the discharge, and has sustained the discharge, its order therein is final and it has no power thereafter to set aside the order and make a new order.
See 18 **Cal. Jur.** 986.
(2) Municipal Corporations--Petition--Sufficiency of.
In a proceeding for a mandate to compel reinstatement of a discharged civil service employee of a municipality, there is no merit in the point that the petition does not affirmatively allege a prior order of the commission, certified by the board of public works, and that, therefore, it was improper to sustain a demurrer to the petition without leave to amend, where an exhibit to the petition, which is the order under review, expressly refers to the prior action and purports to rescind it.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Emmet H. Wilson, Judge. Affirmed.

The facts are stated in the opinion of the court.

COUNSEL
Leo V. Youngworth and J. Harold Decker for Appellant.
Ray L. Chesebro, City Attorney, Frederick von Schrader, Assistant City Attorney, and Thatcher J. Kemp and Jerrell Babb, Deputies City Attorney, for Respondents.
THE COURT.

A hearing was granted in this case after decision by the District Court of Appeal, Second Appellate District, Division One. After further consideration, we adopt the following opinion of said court as part of the opinion of this court:

(1) "Respondents' demurrer to appellant's petition for a writ of mandate was sustained without leave to amend, and the appeal is from the judgment subsequently entered against petitioner. The petition alleges that the appellant, a civil service employee in the bureau of engineering of respondent city, was discharged from his position, and that he thereupon made written application to the civil service commission for an investigation of the grounds for such discharge and hearing thereon. A certified copy of the findings of the commission, the statutory name of which is 'Board of Civil Service Commissioners', is made a part of the petition. This shows that on November 13, 1931, 'a motion was adopted rescinding the action of the Civil Service Commission on October 20, 1931, sustaining said discharge', and that a second motion was then adopted, finding that the grounds stated for the discharge of the appellant were not sustained and ordering him restored to duty. The only question presented on this appeal is whether or not the civil service commission, after having passed upon the question submitted to it, could thereafter vacate its findings and make another and contrary order. Respondent contends that when the commission acted on the matter it exhausted its jurisdiction, and that the subsequent resolution is void.

"The charter of the respondent city provides that a discharged employee may file an application with the board of civil service commissioners for an investigation of the grounds for his discharge. It further provides: 'If after such investigation said board finds, in writing, that the grounds stated for

such removal, discharge or suspension were insufficient or were not sustained, and also finds in writing that the person *407 removed, discharged or suspended is a fit and suitable person to fill the position from which he was removed, discharged or suspended, said board shall order said person ... to be reinstated or restored to duty. The order of said board with respect to such removal, discharge or suspension shall be forthwith certified to the appointing board or officer, and shall be final and conclusive; ...' (Sec. 112 [a], Stats. 1925, pp. 1024, 1067.)

"The jurisdiction of the commission is a special and limited one. (*Peterson v. Civil Service Board*, 67 Cal. App. 70 [227 Pac. 238].) The required procedure was followed, and the question of appellant's discharge was determined by the commission when it adopted the first resolution. Its action sustaining his discharge was 'final and conclusive'. (*Krohn v. Board of Water & Power Commissioners*, 95 Cal. App. 289, 296 [272 Pac. 757].) It had no jurisdiction to retry the question and make a different finding at a later time. The charter gives no such grant of power, and it may not be implied. 'A civil service commission has no inherent power after entering a final order dismissing an officer from the service to entertain a motion for new trial or rehearing and review and set aside its prior order.' (43 Cor. Jur. 682. See, also, *Cook v. Civil Service Commission*, 160 Cal. 598, 600 [117 Pac. 662].)"

Petitioner urges that the case of *Lane v. United States*, 241 U. S. 201 [36 Sup. Ct. 599, 60 L. Ed. 956], sustains his position. It was therein held that the secretary of the interior had power to reconsider a prior administrative order as to which persons were heirs of an Indian allottee of land, despite the fact that his order was, under the statute, "final and conclusive". A reading of the opinion, however, discloses that at the time the redetermination was made, title to the land was still in the United States and under the administrative control of the land department. There were undoubtedly several grounds, both of policy and statutory interpretation, for holding that in such a case a high executive officer had power to reconsider his orders.

But the rule stated above, that a civil service commission has no such power in the absence of express authorization, is sound and practical. If the power were admitted, what procedure would govern its exercise? Within what time would it have to be exercised; how many times could it be *408 exercised? Could a subsequent commission reopen and reconsider an order of a prior commission? And if the commission could reconsider an order sustaining a discharge, could it reconsider an order having the opposite effect, thus retroactively holding a person unfit for his position? These and many other possible questions which might be raised demonstrate how unsafe and impracticable would be the view that a commission might upset its final orders at its pleasure, without limitations of time, or methods of procedure. Seemingly in recognition of this, the Los Angeles charter expressly provides a procedure for reconsidering orders of suspension or removal of policemen or firemen by a board of inquiry, within three years after the making of an order; but no such procedure is provided in the case of the civil service commission.

(2) Petitioner finally suggests that the petition does not affirmatively allege a prior order of the commission of October 20, 1931, certified to the board of public works, and that therefore it was improper to sustain the demurrer without leave to amend. There is no merit in this point, for the exhibit to the petition, which is the order of November 17th, expressly refers to the prior action of October 20, 1931, and purports to rescind it. The fact of a prior order is thus definitely established, and the demurrer was properly sustained.

The judgment is affirmed.

Cal.
Heap v. City of Los Angeles
6 Cal.2d 405, 57 P.2d 1323

END OF DOCUMENT

Save Oxnard Shores v. California Coastal Com'n (City Council of City of Oxnard)
Cal.App.2.Dist.
SAVE OXNARD SHORES et al., Plaintiffs and Appellants,
v.
CALIFORNIA COASTAL COMMISSION, Defendant and Appellant; CITY COUNCIL OF THE CITY OF OXNARD, Real Party in Interest and Respondent; OXNARD SHORES OCEANFRONT LOT OWNERS ASSOCIATION et al., Interveners and Appellants.
No. B003988.

Court of Appeal, Second District, California.
Mar 26, 1986.

SUMMARY

In a proceeding for writ of administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a city's land use plan under which residential construction would be allowed in an oceanfront area, the trial court issued an alternative writ, in compliance with which the commission set aside its original decision and filed a return vacating the conditional certification as to the oceanfront area. On motion of an intervenor, an association of lot owners in the area alleging that its members were permitted by the land use plan to construct residences on their lots and that any action setting aside the commission's decision would deprive them of economic development of their property and constitute a taking without just compensation, the trial court issued an order striking the return and restraining the commission from setting aside its decision pending resolution of the litigation. Subsequently, the court ordered the alternative writ discharged and the petition dismissed, and awarded costs to the intervenor and the city. After judgment, the court denied the intervenor's motion for attorney fees on the private attorney general theory pursuant to Code Civ. Proc., § 1021.5. (Superior Court of Ventura County, No. SP 50444, William L. Peck, Judge.)

The Court of Appeal affirmed in part and reversed in part. It held the trial court's action in ordering the returns stricken and in holding the commission's action to be invalid improper, since the commission's action in compliance with the writ was a valid exercise of its authority, and upon resubmission the portion of the land use plan dealing with the affected area would be treated the same as on original submission, receiving a hearing with public participation and the full panoply of procedural safeguards. The court also held that the award of costs to the intervenor and the city was improper, and that the motion for attorney fees was properly denied, since there had been no showing that the litigation was necessary or that the lawsuit placed a burden on the members of the lot owners' association out of proportion to their individual interests in the matter. On appeal, the court held, the association's claim for attorney fees had become moot, since it was not a successful party as required by § 1021.5. (Opinion by Gilbert, J., with Stone, P. J., and Abbe, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 99--Judicial Review and Relief--Methods-- Administrative Mandamus--Relation to Traditional Mandamus.
Because Code Civ. Proc., § 1094.5, supplements the existing law of mandamus, the same principles and procedures are applicable to both traditional and administrative mandamus. Administrative mandamus did not, by enactment of that section, acquire a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.
[See Cal.Jur.3d, Administrative Law, § 317.]
(2) Administrative Law § 99--Judicial Review and Relief--Methods-- Administrative Mandamus--Alternative Writ.
On petition for administrative mandamus, a court will issue an alternative writ when the petition sufficiently alleges a cause of action that, if proven, could lead to the issuance of a final or peremptory writ. Administrative proceedings should be completed before the issuance of the writ. The writ is not a final court adjudication but is merely an order for the

agency to show cause or, in the alternative, to comply. The agency is placed on notice that petitioners have made a sufficient showing to cast doubt upon the validity of its decision. Although it may be expected that the agency will file an answer to the writ, compliance is among the acceptable responses, and it terminates the litigation.

(3) Administrative Law § 100--Judicial Review and Relief--Methods-- Administrative Mandamus--Availability of Remedy--Where Agency Has Complied With Alternative Writ.
Where an agency files a return that indicates compliance with an alternative writ, the petition is subject to dismissal for mootness, since no purpose would be served in directing the doing of that which has already been done.

(4) Administrative Law § 74--Administrative Actions--Adjudication-- Rehearing, Reconsideration, and Modification.
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 its decision has become final. Thus, at the time a lot owners' association filed a petition for administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the commission lacked authority to modify or revoke its original decision, which had become final.
[See Am.Jur.2d, Administrative Law, § 522.]
(5a, 5b, 5c) Pollution and Conservation Laws § 10--Conservation-- Coastal Protection--Power of Coastal Commission to Set Aside Decision.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the court's action was improper in ordering the returns filed by the commission in compliance with the writ stricken pursuant to the motion of an intervenor, an association of lot owners in the affected area, on the ground that the commission lacked the authority to vacate its final decision after 60 days or to set it aside after the lot owners' association intervened, and holding the commission's action to be invalid. The commission's action in compliance with the writ was a valid exercise of its authority, and upon resubmission the portion of the land use plan dealing with the affected area would be treated the same as on original submission, receiving a hearing with public participation and the full panoply of procedural safeguards.

(6) Pollution and Conservation Laws § 10--Conservation--Coastal Protection--Presumption That Coastal Commission Acted in Public Interest.
The presumption that in reaching a decision to approve a land use plan under which residential construction in an oceanfront area would be allowed the California Coastal Commission acted regularly and in the public interest applied equally to its action in complying with an alternative writ directing the commission to set aside its decision or to appear and show cause, and this presumption was not affected by an interim change in the membership on the commission.

(7) Administrative Law § 74--Administrative Actions--Vacating Decision in Compliance With Alternative Writ of Mandate.
Administrative mandamus is a statutory procedure for initiating judicial review of an agency decision that is otherwise accorded a presumption of regularity. Although the agency may defend its decision, neither statutory authority nor judicial precedent requires that response. Further, in the absence of an express requirement that a public hearing be conducted, due process is not violated when an agency obviates judicial review by vacating its decision in voluntary compliance with the writ. Hence, the California Coastal Commission did not violate procedural due process by setting aside a portion of its decision to approve a city's land use plan allowing residential construction in an oceanfront area in compliance with an alternative writ of mandate, notwithstanding that it took such action without notice or a hearing.

(8a, 8b, 8c) Pollution and Conservation Laws § 10--Conservation-- Coastal Protection--Power of Coastal Commission to Set Aside Decision.
In a proceeding for administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the action of the commission in setting aside its prior decision did not

deprive an intervenor, a lot owners' association alleging that under the land use plan its members were permitted to construct residences on their oceanfront lots and any action setting aside the commission's decision would deprive them of economic development of their property and constitute a taking without just compensation, of procedural due process; because the mere presence of an intervenor does not stay operation of an alternative writ, the commission still retained the option of noncompliance, and after the commission's return was filed, the court had no further authority, the matter was moot, and the intervenor could not compel the court to take further action; further, the commission's original decision did not turn the desire of members of the association to build homes on their oceanfront lots into a constitutional right.

(9) Parties § 10--Intervention--Power of Interveners.
The ability of interveners to control litigation is circumscribed because they are bound by the status of the proceedings at the time of intervention. They may not, therefore, retard the principal suit, delay trial, or change the position of the parties.

(10) Zoning and Planning § 5--Constitutional and Statutory Provisions-- Vested Rights.
A California property owner has no vested right in an existing or anticipated land use plan, designation, or zoning classification. Nor has he a cause of action for unconstitutional taking or damaging of his property due to the adoption of particular conditions for development. An exception may be made for a developer who has acquired a vested interest in completion of a public construction project by a good faith investment of time or money.

(11) Pollution and Conservation Laws § 10--Conservation--Coastal Protection--Statutory Goals.
The paramount concern of the California Coastal Commission is the protection of the coastal area for the benefit of the public. The predominant goal of the Coastal Act (Pub. Resources Code, § 30000 et seq.) is the protection of public access and preservation of the fragile coastal ecology from overzealous encroachment.

(12) Costs § 8--Taxation and Award--Mandamus Proceeding--Award to Intervener.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, in which proceeding the court, on motion of an intervener, struck the commission's return as invalid, discharged the alternative writ, and dismissed the petition, petitioner, an association of homeowners in the affected area, was improperly ordered to pay costs to the intervener, which was an unincorporated association of residents in the affected area, and to the city that had formulated the land use plan.

(13) Costs § 7--Amount Items Allowable--Attorney Fees--Private Attorney General Theory.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, and in which the court on motion of an intervenor, an association of lot owners in the affected area, ordered the returns filed by the commission in compliance with the writ stricken and held the commission's action to be invalid, the trial court did not abuse its discretion in denying the intervener's motions to require petitioners and the commission to pay its attorney fees on a private attorney general theory pursuant to Code Civ. Proc., § 1021.5, where there was no showing that the litigation was necessary or that the lawsuit placed a burden on the intervenor's members out of proportion to their individual interests in the matter, and where the public benefit, if any, was incidental by comparison to the purely private advantage for the association's members. Further, on appeal the intervener's claim for attorney fees was moot, in that the intervener was not a successful party as required by § 1021.5.
[Allowance of attorneys' fees in mandamus proceedings, note, 34 A.L.R.4th 457.]

COUNSEL
Samuel Goldfarb, in pro. per., Alan G. Martin, Timothy T. Coates, Greines, Martin, Stein & Richland, Cox & Mellen, Michael David Cox, Chase Mellen III and Phil Seymour for Plaintiffs and Appellants.
John K. Van de Kamp, Attorney General, N. Gregory Taylor, Assistant Attorney General, and Peter H. Kaufman, Deputy Attorney General, for Defendant and Appellant.
Thorpe, Sullivan, Workman & Thorpe, Sullivan,

Workman & Dee, Roger M. Sullivan and Henry K. Workman for Interveners and Appellants.
K. D. Lyders, City Attorney, for Real Party in Interest and Respondent.
GILBERT, J.

Here we hold that an administrative agency, the California Coastal Commission (Commission), may set aside a portion of its previous decision in compliance with an alternative writ of mandamus.

The alternative writ issued on the petition of Save Oxnard Shores, an unincorporated association of property owners, including William Coopman, Robert Hansen and Samuel Goldfarb (collectively SOS). SOS questioned the validity of a Commission decision which conditionally certified the City of Oxnard (Oxnard) land use plan (LUP), permitting residential construction in an area known as Oxnard Shores.

Oxnard Shores Oceanfront Lot Owners Association and property owners Erik Linder and Emanuel Gyler (collectively OSOLOA) intervened before the Commission filed its return setting aside the challenged portion of its decision. Thereafter, on motion by OSOLOA, the trial court struck the Commission's return as invalid, discharged the alternative writ, and dismissed the SOS petition. *146

We reverse that portion of the order striking the Commission's return. We affirm the order denying OSOLOA attorney fees on its cross-appeal.

Facts

On May 20, 1980, following public hearings, Oxnard approved a proposed LUP, which permitted residential development in Oxnard Shores, and submitted it to the South Central Regional Coastal Commission (Regional). Regional approved and forwarded the LUP to the Commission on September 19, 1980. On July 21, 1981, the Commission certified the LUP on condition that its provisions be revised to improve public access to the beach in conformity with the California Coastal Act of 1976. (Pub. Resources Code, § 30000 et seq., Coastal Act.)

On September 21, 1981, SOS filed a petition for a writ of administrative mandamus (Code Civ. Proc., § 1094.5) [FN1] directing the Commission to set aside and vacate its decision as to Oxnard Shores. SOS alleged that Oxnard Shores was within 100 year flood and storm wave run-up areas and Commission planners had evidence that the area was likely to suffer additional erosion. Therefore, residential development would be inconsistent with coastal protection policies (Coastal Act, §§ 30253, 30211, 30212). In particular, SOS alleged that: (1) a substantial setback from the mean high tide line was required for new construction in the area which was subject to further beach erosion, and (2) prescriptive easements for public use of the beach might be extinguished because access would be restricted during high tides by beachfront residences.

FN1 All statutory references hereafter are to the Code of Civil Procedure unless otherwise specified.

On October 2, the court issued an alternative writ directing the Commission to set aside its decision or to appear and show cause on November 16, 1981. On October 28, OSOLOA filed a complaint in intervention seeking discharge of the alternative writ and denial of the peremptory writ. OSOLOA alleged that its members were permitted by the LUP to construct single-family residences on their oceanfront lots, and any action setting aside the Commission's decision would deprive them of economic development of their property and constitute a taking without just compensation. (Cal. Const., art. I, § 19.)

On January 8, 1982, the Commission conducted a public hearing on the application of OSOLOA member Emanuel Gyler for a permit to build a single-family home on his oceanfront lot. Following testimony relating to residential construction and public beach access, some commissioners expressed *147 doubt about allowing beachfront construction on Oxnard Shores. The hearing on the permit application was adjourned. Because of the alternative writ, the Commission convened in executive session to consider its prior decision.

On January 21, 1982, the Commission set aside its original July 1981 decision. On January 22 it filed a return vacating the conditional certification as to Oxnard Shores in compliance with the writ. The return stated: "First, review of the record of the public hearing on that matter, in light of the allegations and arguments contained in the Petition for Writ of Mandate, called into serious question the

correctness of the Commission's analysis and application of geological evidence presented at the hearing; second, review of the record also raised substantial questions concerning the propriety of the Commission's interpretation and application of the Coastal Act with respect to this evidence." A supplemental return was filed in April stating that a public hearing would be deferred pending Oxnard's resubmission of the LUP.

On May 20, the court granted OSOLOA's motion to strike the return and to restrain the Commission from setting aside its decision pending resolution of the litigation. On July 28, at the Commission's request, the court made a "clarification" order that stated: (1) the returns were stricken because the Commission lacked authority to vacate its final decision after 60 days, or to set it aside after OSOLOA intervened, and (2) although the motion did not raise the issue, the court upon request would hold the Commission's January 1982 action invalid.

On November 23, 1982, OSOLOA accepted this invitation and by way of a supplemental complaint requested a ruling that the Commission's action to reconsider its original decision was invalid. Not surprisingly, the trial court on cross-motions for summary adjudication, ruled that the Commission's action vacating its earlier decision was invalid.

On March 16, 1983, OSOLOA filed a motion to discharge the alternative writ and dismiss the SOS petition because no issues were presented for trial. The court had entered an order October 12, 1982, which required SOS to file the administrative record by January 17, established a briefing schedule beginning February 15, and set trial for April 4. OSOLOA alleged that SOS had not yet either paid for or filed the administrative record and that without the record, SOS could not show the insufficiency of the evidence to support the decision or overcome the presumption that the Commission regularly performed its official duty. SOS argued that the Commission's compliance rendered the administrative record irrelevant. *148

On June 22, 1983, the trial court granted OSOLOA's motion. The court stated, inter alia, that while trial was continued pending receipt of the administrative record, the Commission filed a return purporting to vacate its decision without a hearing, solely as to Oxnard Shores, on a "review of the record." The court ordered the return stricken because no record had been prepared and declared the Commission's action invalid. In the absence of the administrative record, the matter was governed by the presumption that the Commission proceedings were "regularly performed" and supported by the evidence (Evid. Code, § 664; *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 573-574 [58 Cal.Rptr. 664]) and there was no basis to issue a peremptory writ of mandate. The court therefore discharged the alternative writ, denied the peremptory writ, dismissed the SOS petition, reaffirmed its orders striking the Commission's returns to the alternative writ, and awarded costs to OSOLOA and Oxnard.

After judgment, OSOLOA moved for orders allowing attorney's fees against the Commission and SOS on the "private attorney general" theory. (Code Civ. Proc., § 1021.5.)The court denied both motions.

Discussion

SOS contends that the trial court erred in striking the returns and that the Commission's valid compliance with the alternative writ rendered the peremptory writ proceedings moot.

I

The alternative writ of mandamus issued on SOS' timely verified petition for judicial review under section 1094.5 as authorized by section 30801 of the Coastal Act (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280 [109 P.2d 942, 132 A.L.R. 715].) Administrative mandamus (§ 1094.5) provides for judicial review of an agency decision resulting from a proceeding in which "(1) by law a hearing is required to be given, (2) evidence is required to be taken, and (3) the determination of the facts is the responsibility of the administrative agency." (§ 1094.5, subd. (a); *Gong v. City of Fremont, supra.*, 250 Cal.App.2d 568, 572.)

(1)Because section 1094.5 supplements the existing law of mandamus, the same principles and procedures are applicable to both traditional and administrative mandamus. "... administrative mandamus did not thereby acquire a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or

exempted from the latter's established principles, requirements and limitations." (*Grant v. Board of Medical Examiners* (1965) 232 Cal.App.2d 820, 826 [43 Cal.Rptr. 270].)*149 "... mandamus pursuant to section 1094.5, commonly denominated 'administrative' mandamus, is mandamus still.... The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute...." (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 673-674 [170 Cal.Rptr. 484, 620 P.2d 1032].) The established mandamus procedures and rules of pleading (§ 1109) govern proceedings to obtain judicial review of administrative agency actions. (*Felice v. Inglewood* (1948) 84 Cal.App.2d 263, 267 [190 P.2d 317]; *Scannell v. Wolff* (1948) 86 Cal.App.2d 489, 492 [195 P.2d 536].)

(2)The court will issue an alternative writ when the petition sufficiently alleges a cause of action which, if proven, could lead to the issuance of a final or peremptory writ. (*Joerger v. Superior Court* (1934) 2 Cal.App.2d 360, 363 [37 P.2d 1084].) Administrative proceedings should be completed before the issuance of a judicial writ. (*McPheeters v. Board of Medical Examiners* (1947) 82 Cal.App.2d 709, 717 [187 P.2d 116].) The writ is not a final court adjudication but is merely an order for the agency to show cause or, in the "alternative," to comply. The agency is placed on notice that petitioners have made a sufficient showing to cast doubt upon the validity of its decision. Although it may be expected that the agency will file an answer to the writ, compliance is among the acceptable responses (§§ 1087, 1089, 1104, 1109), and it terminates the litigation. (*George v. Beaty* (1927) 85 Cal.App. 525, 529 [260 P. 386].)

(3)When the agency files a return which indicates compliance with the alternative writ, the petition is subject to dismissal for mootness. (*Bruce v. Gregory* (1967) 65 Cal.2d 666 [56 Cal.Rptr. 265, 423 P.2d 193].) "... [I]f the respondent has complied with the petitioner's demands after issuance of the alternative writ, the writ has accomplished the purpose of the mandamus proceedings and the petition should be dismissed as moot. [Citations.] The rationale is, 'No purpose would be served in directing the doing of that which has already been done.' [Citations.] In *George v. Beaty*, 85 Cal.App. 525 [260 P. 386], the court said: '[T]he remedy of *mandamus* will not be employed where the respondents show that they are willing to perform the duty without the coercion of the writ.... "'*Mandamus* will not issue to compel the doing of an act which has already been done, *or which the respondent is willing to do without coercion*'...." (P. 529.) '[W]here the return to the alternative writ shows a compliance therewith, the petition will be dismissed.' (P. 532.)" (*Id.*, at p. 671.)

(4)It is true, as OSOLOA argues, 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 its decision has become final. (*Olive Proration etc. Com. v. Agri. etc. Com.* (1941) 17 Cal.2d 204, *150 209 [109 P.2d 918].) Therefore, at the time the petition was filed the Commission lacked authority to modify or revoke its original decision, which had become final. (5a)It does not follow that the Commission was without power to comply with a judicial alternative writ.

The SOS petition did not incorporate the administrative record, but it alleged with specificity the ways in which the Commission's original decision violated the policies expressed in the Coastal Act. The court determined that a sufficient showing was made and the alternative writ issued 10 days after the petition was served on the Commission and Oxnard. (§§ 1088, 1107.) The writ commands "the party to whom it is directed immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a time and place then or thereafter specified by a court order why he has not done so." (§ 1087.)

The alternative writ of mandamus differs from its counterpart in prohibition, which forecloses all agency action pending hearing to determine the necessity for a permanent injunction. (§ 1104.) To the contrary, the alternative writ of mandamus orders the party to whom it is directed to take action in compliance "or" to show cause. (§ 1087.) The Commission was thereby authorized to determine whether to defend its original decision or comply with the writ until it was quashed or discharged. (6)The presumption that the Commission acted regularly and in the public interest in reaching its original decision applies equally to its action complying with the writ. (Coastal Act, § 30004, subd. (b).) This presumption is not affected by an interim

change in the membership on the Commission, as OSOLOA argues.

(7)Oxnard attempts to differentiate administrative mandamus (§ 1094.5) requesting a judicial order to vacate a final administrative decision, from traditional mandamus (§ 1085) seeking a judicial order to compel performance of a ministerial act. Because the Commission here performed an adjudicatory function (*Yost v. Thomas* 36 Cal.3d 561 [205 Cal.Rptr. 801, 685 P.2d 1152]), Oxnard argues that procedural due process requires notice and a hearing before its decision can be vacated. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612 [156 Cal.Rptr. 718, 596 P.2d 1134].) Administrative mandamus, however, is a statutory procedure for initiating judicial review of an agency decision which is otherwise accorded a presumption of regularity. Although the agency may defend its decision, neither statutory authority nor judicial precedent require that response. Furthermore, in the absence of an express requirement that a public hearing be conducted, due process is not violated when an agency obviates judicial review by vacating its decision in voluntary compliance with the writ. *151

(8a)OSOLOA argues, nevertheless, that in view of the constitutional issues affecting the property interests held by the interveners, the Commission was required to extend full procedural due process, including a public hearing, before vacating its decision. The presence of an intervener, however, does not bar agency compliance with a judicial order in the form of an alternative writ.

The allegations of OSOLOA's complaint established that its members were entitled to intervene because their property interests were affected by the Commission's decision. (*Hospital Council of Northern Cal. v. Superior Court* (1973) 30 Cal.App.3d 331, 336 [106 Cal.Rptr. 247]; *Linder v. Vogue Investments, Inc.* (1966) 239 Cal.App.2d 338, 343-344 [48 Cal.Rptr. 633].) (9)The ability of intervenors to control the litigation is, nonetheless, circumscribed because they are bound by the status of the proceedings at the time of intervention. (*Linder v. Vogue Investments, Inc., supra.*, 239 Cal.App.2d at p. 344; *Townsend v. Driver* (1907) 5 Cal.App. 581 [90 P. 1071].) Intervenors, therefore, may not retard the principal suit, delay trial, or change the position of the parties. (*Hibernia etc. Society v. Churchill* (1900) 128 Cal. 633, 636 [61 P. 278].)

(8b)When OSOLOA intervened, the alternative writ had already issued and OSOLOA did not take immediate action to recall, discharge, or otherwise stay operation of the writ. (*Marc Bellaire, Inc. v. Fleischman* (1960) 185 Cal.App.2d 591, 597 [8 Cal.Rptr. 650].) Because the mere presence of an intervener does not stay operation of the alternative writ, the Commission still retained the option of compliance. After the Commission's return was filed, the court had no further authority, the matter was moot, and the third party interveners could not compel the court to take further action. When a return to the writ is filed indicating compliance with the court's order, there is no need for the court to make a further determination concerning the peremptory writ.

Moreover, the desire of the members of OSOLOA to build homes on their oceanfront lots did not turn into a constitutional right because of the Commission's original decision. (Cal. Const., art. I, § 19.)(10)A California property owner has no vested right in an existing or anticipated land use plan, designation or zoning classification. (*HFH, Ltd. v. Superior Court* (1975) 15 Cal.3d 508, 516 [125 Cal.Rptr. 365, 542 P.2d 237],cert. den., 425 U.S. 904 [47 L.Ed.2d 754, 96 S.Ct. 1495]; *Cormier v. County of San Luis Obispo* (1984) 161 Cal.App.3d 850 [207 Cal.Rptr. 880].) Nor has he a cause of action for unconstitutional taking or damaging of his property due to the adoption of particular conditions for development. (*Agins v. City of Tiburon* (1979) 24 Cal.3d 266 [157 Cal.Rptr. 372, 598 P.2d 25],affd. (1980) 447 U.S. 255 [65 L.Ed.2d 106, 100 S.Ct. 2138]) or any portion of *152 an LUP. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 121 [109 Cal.Rptr. 799, 514 P.2d 111].) An exception may be made for a developer who has acquired a vested interest in completion of a public construction project by a good faith investment of time or money. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785 [132 Cal.Rptr. 386, 553 P.2d 546],cert. den., 429 U.S. 1083 [51 L.Ed.2d 529, 97 S.Ct. 1089]; *Transcentury Properties, Inc. v. State of California* (1974) 41 Cal.App.3d 835 [116 Cal.Rptr. 487].)

(11)The paramount concern of the Commission is the protection of the coastal area for the benefit of the public. The predominant goal of the Coastal Act is the protection of public access and preservation of the fragile coastal ecology from overzealous encroachment. The objectives of the Coastal Act are succinctly stated by Justice Mosk in *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 162-163 [188 Cal.Rptr. 104, 655 P.2d 306] as follows:

"Growing public consciousness of the finite quantity and fragile nature of the coastal environment led to the 1972 passage of ... an initiative measure entitled the California Coastal Zone Conservation Act (the 1972 Coastal Act). (Former Pub. Resources Code, §§ 27000-27650.) [¶] ... [¶] One of the stated purposes of the 1972 Coastal Act was to increase public access to the coast. The 1972 Coastal Act was an interim measure, destined by its own terms to expire at the beginning of 1977. It authorized the interim coastal commission to prepare a study summarizing the progress of planning in the coastal zone and delineating goals and recommendations for the future of California's shoreline for the guidance of the Legislature. The study, labeled the California Coastal Plan, was completed in December 1975 and submitted to the Legislature, which used it as a guide when drafting the California Coastal Act of 1976 (the Coastal Act). (Pub. Resources Code, § 30000 et seq.) The Coastal Act created the California Coastal Commission (the Commission) to succeed the California Coastal Zone Conservation Commission. One of the objectives of the 1976 version of the Coastal Act was to preserve existing public rights of access to the shoreline and to expand public access for the future."

(8c)We presume that the Commission acted in accordance with the Coastal Act objectives when it set aside its prior decision. Because the Commission was not required under the circumstances of this case to conduct a public hearing to determine its response to the writ, its action did not deprive interveners of procedural due process.

(5b)The Coastal Act prescribes procedures for Commission approval and certification of land use plans submitted by local governments of coastal *153 area communities. (Pub. Resources Code, § 30512, subd. (e).) In this case, Oxnard prepared and submitted an original LUP, which Regional had approved, and which was presented for the first time to the Commission for approval and certification. (Pub. Resources Code, §§ 30511, 30513.)The Commission conditionally certified the LUP and returned it to Oxnard with instructions to make the required provisions for public beach access. (Pub. Resources Code, § 30500, subd. (a).)

Coastal Act section 30512, subdivision (d) states: "If the Commission refuses certification, in whole or in part, it shall send a written explanation for such action to the appropriate local government and regional commission. A revised land use plan may be resubmitted directly to the Commission for certification." The Commission's decision notified Oxnard of the modifications that should be made before the LUP was resubmitted to the Commission for certification. The returns filed by the Commission, however, vacated the conditional certification of the LUP as to Oxnard Shores and thus reopened the entire subject of development on oceanfront property. We conclude from our analysis of the Coastal Act that the public hearing process shall be initiated anew as to Oxnard Shores upon resubmission of the LUP.

The Commission adopts its own rules and regulations to carry out the purposes of the Coastal Act. (Pub. Resources Code, § 30333.)The Coastal Act requires the Commission to obtain the full and adequate participation by all interested groups and the public in its works and programs. (Pub. Resources Code, § 30339, subds. (b), (d).) Among other things, the Coastal Act seeks to insure open consideration and effective public participation in Commission proceedings. (Pub. Resources Code, § 30006.)

A public hearing is required at the time the Commission considers an original submission of a land use plan. Although the Coastal Act is not explicit in this regard, the reasonable inference from the statutory scheme is that the portion of the Oxnard LUP dealing with Oxnard Shores must, upon resubmission, be treated the same as an original submission. It will, therefore, receive a hearing with public participation and the full panoply of procedural safeguards. (Pub. Resources Code, § 30512.)

In view of our determination that the Commission's action in compliance with the alternative writ was a valid exercise of its authority, we do not reach the additional issues relating to the Commission's action or OSOLOA's supplemental complaint.

(12)SOS was improperly ordered to pay costs to OSOLOA, which is an "unincorporated association of residents within Oxnard Shores," and to *154 Oxnard pursuant to section 1032. (*City of Long Beach v. Bozek* (1982) 31 Cal.3d 527 [183 Cal.Rptr. 86, 645 P.2d 137], judg. vacated and cause remanded(1983) 459 U.S. 1095 [74 L.Ed.2d 943, 103 S.Ct. 712], reiterated (1983) 33 Cal.3d 727 [190 Cal.Rptr. 918, 661 P.2d 1072].) This order is stricken.

(5c)The trial court improperly ordered the returns stricken pursuant to OSOLOA's motion on May 20, 1982, and held the Commission's action was invalid on February 23, 1983. The order and judgment are, and each is, reversed.

II

(13)OSOLOA on cross-appeal contends that the trial court abused its discretion in denying motions to require SOS, Samuel Goldfarb or the Commission to pay its attorneys fees on a "private attorney general" theory. (§ 1021.5.)These motions were denied because the court concluded that an order for payment of fees would unconstitutionally infringe the rights of SOS and its individual members to petition a governmental entity for redress of grievances. (Cal. Const., art. I, § 3; *City of Long Beach v. Bozek*, *supra.*, 31 Cal.3d 527, 534.) The court further found that OSOLOA did not vindicate or enforce a right which conferred a significant benefit on the general public, since its members merely desired to construct residences on their oceanfront lots. (*Pacific Legal Foundation v. California Coastal Com.*, *supra.*, 33 Cal.3d 158, 167.) The public's interests were represented by Oxnard and the Commission. (See *Grimsley v. Board of Supervisors* (1985) 163 Cal.App.3d 672, 678 [209 Cal.Rptr. 587] and 169 Cal.App.3d 960 [213 Cal.Rptr. 108];*People* ex rel. *Deukmejian v. Worldwide Church of God* (1981) 127 Cal.App.3d 547, 556 [178 Cal.Rptr. 913].)

There was no showing that the litigation was necessary or that the lawsuit placed a burden on OSOLOA members out of proportion to their individual interests in the matter. (*County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 89 [144 Cal.Rptr. 71]; *Woodland Hills Residents Assn. v. City Council* (1979) 23 Cal.3d 917, 941 [154 Cal.Rptr. 503, 593 P.2d 200]; see also 34 A.L.R.4th 457 §§ 12-14.) Here, the public benefit, if any, was incidental by comparison to the purely private advantage for the members of OSOLOA. (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547 [202 Cal.Rptr. 400]; *Beach Colony II v. California Coastal Com.* (1984) 151 Cal.App.3d 1107 [199 Cal.Rptr. 195] and (1985) 166 Cal.App.3d 106 [212 Cal.Rptr. 485].)

On appeal, OSOLOA's claim for attorneys fees has become moot because OSOLOA is not a successful party as required by section 1021.5. The judgment denying attorneys fees is affirmed. *155

The judgment declaring the Commission's action invalid is reversed and the court is instructed to accept the returns to the alternative writ which were improperly stricken.

The judgment in all other respects is affirmed because the Commission's action in compliance with the alternative writ rendered the SOS petition moot.

Each party to bear its own costs on appeal.

Stone, P. J., and Abbe, J., concurred.

Petitions for a rehearing were denied April 23, 1986, and respondent's petition for review by the Supreme Court was denied June 18, 1986. *156

Cal.App.2.Dist.
Save Oxnard Shores v. California Coastal Com.
179 Cal.App.3d 140, 224 Cal.Rptr. 425

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H American Federation of Labor-Congress of Indus. Organizations v. March Fong Eu (Uhler)
Cal.

AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS et al., Petitioners,
v.
MARCH FONG EU, as Secretary of State, etc., et al., Respondents; LEWIS K. UHLER, Real Party in Interest
S.F. No. 24746.

Supreme Court of California
Aug 27, 1984.

SUMMARY

On an original petition for writ of mandate, the Supreme Court directed issuance of a writ commanding the Secretary of State not to take any action, including the expenditure of public funds, to place a proposed Balanced Federal Budget Statutory Initiative on the November 6, 1984, General Election ballot. The initiative contained a resolution calling on Congress to submit a balanced budget amendment and applied to Congress for a constitutional convention to propose such an amendment, mandated the Legislature to adopt the resolution and provided sanctions for its failure to do so, and further provided for adoption of the resolution by the people with directions to the Secretary of State to transmit it to Congress if the Legislature failed to adopt it within 40 legislative days. The court held that the initiative, to the extent that it applied for a constitutional convention or required the Legislature to do so, did not conform to U.S. Const., art. V, providing for applications by the "Legislatures of two-thirds of the several states," not by the people through their initiative. The court further held that the measure exceeded the scope of the initiative power under the controlling provisions of the California Constitution (Cal. Const., art. II, § 8 and art. IV, § 1), under which the initiative power is the power to adopt "statutes," while the crucial provisions of the balanced budget initiative did not adopt a statute or enact a law, but adopted, and mandated the Legislature to adopt, a resolution, which did not change California law and constituted only one step in a process which might eventually amend the federal Constitution. It held such a resolution was not an exercise of legislative power reserved to the people under the California Constitution. The court also held that, because the present proceeding challenged the power of the people to adopt the proposed initiative, preelection judicial review of the measure was proper. (Opinion by Broussard, J., with Bird, C. J., Mosk, Reynoso and Grodin, JJ., concurring. Separate concurring opinion by Kaus, J. Separate dissenting opinion by Lucas, J.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Initiative and Referendum § 8--State Elections--Preelection Judicial Review.
Preelection judicial review of the proposed Balanced Federal Budget Statutory Initiative was proper, where the initiative was challenged on the ground that the people lacked the power to adopt the proposed initiative, specifically that under U.S. Const., art. V, the people have no constitutional authority to apply to Congress for a constitutional convention, or to mandate their Legislature to submit such an application, and the proposed initiative was not legislative in character and does not enact a statute as required by Cal. Const., art. II, § 8.

(2) Constitutional Law § 19--Constitutionality of Legislation--Raising Questions of Constitutionality--Initiative--Under Federal Constitution--Justiciable Issues.
In a mandamus proceeding to prohibit the Secretary of State from placing on the ballot the proposed Balanced Federal Budget Statutory Initiative, issues arising under U.S. Const., art. V, relating to constitutional amendments, were justiciable, including judicial construction of the word "Legislature" as used in art. V.

(3) Constitutional Law § 13--Construction of Constitutions--Language of Enactment--Federal Constitution--Amendment--Legislature.
References in U.S. Const., art. V, to an application by the "Legislatures" of two-thirds of the states, calling for a constitutional convention, refers to the

representative lawmaking bodies in those states, and any application directly by the People, through their reserved legislative power, would not conform to art. V, and would be invalid.

(4) Constitutional Law § 3--Adoption and Alteration--Amendment--Federal Constitution--State Legislature--Initiative--Constitutional Convention.
A state may not, by initiative or otherwise, compel its legislature to apply for a constitutional convention under U.S. Const., art. V, or to refrain from such action. Under art. V, the legislators must be free to vote their own considered judgment, being responsible to their constituents through the electoral process. Thus, a proposed Balanced Federal Budget Statutory Initiative, to the extent that it mandated the California Legislature to apply to Congress for a constitutional convention, violated U.S. Const., art. V.

(5) Constitutional Law § 3--Adoption and Alteration--Amendment--Federal Constitution--Resolutions--Validity.
A resolution, whether by the Legislature or by the people, urging Congress to approve a proposed federal constitutional amendment is not an act of constitutional significance. Such a resolution does not call for a national convention, propose an amendment, or ratify an amendment and does not raise any issue under the federal Constitution. Thus, a proposed Balanced Federal Budget Statutory Initiative did not offend U.S. Const., art. V, relating to constitutional amendments, insofar as it merely adopted a resolution urging Congress to submit a constitutional amendment to the states, and mandating the Legislature to adopt that resolution.

(6a, 6b) Initiative and Referendum § 6--State Elections--Initiative Measures--To Amend Federal Constitution--Validity--Adoption of Statute.
The proposed Balanced Federal Budget Statutory Initiative, which called on Congress to submit a balanced budget amendment, and applied to Congress for a constitutional convention to propose such an amendment, mandated the Legislature to adopt such resolution and provided sanctions against the Legislature for its failure to do so, and provided for adoption of the resolution by the people in the absence of legislative action, was invalid as a whole because it failed to adopt a statute, and thus did not fall within the reserved initiative power as set out in Cal. Const., art. II, which limits the initiative power to the adoption or rejection of statutes. An initiative which seeks to do something other than enact a statute is not within the initiative power reserved by the people. Even if a portion of the initiative could be upheld on the theory that the term "statute" in art. II could be liberally construed to include a policy resolution, a submission of the measure to the voters without redrafting would confuse the electorate and mislead many voters into casting their ballot on the basis of provisions which had already been found invalid.
[See Cal.Jur.3d, Initiative and Referendum, § 14; Am.Jur.2d, Initiative and Referendum, § 9.]
(7) Initiative and Referendum § 4--State Elections--Judicial Interpretation.
It is the duty of the courts to jealously guard the people's right of initiative and referendum. It is judicial policy to apply a liberal construction to the power whenever it is challenged in order that the right not be improperly annulled.

(8) Initiative and Referendum § 4--State Elections--Nature of Power.
Even under the most liberal interpretation the reserved powers of initiative and referendum do not encompass all possible actions of a legislative body. Those powers are limited, under Cal. Const., art. II, to the adoption or rejection of "statutes," which does not include a resolution that merely expresses the wishes of the enacting body, whether that expression is purely precatory or serves as one step in a process which may lead to a federal constitutional amendment.

(9) Statutes § 1--Definitions and Distinctions--Resolution.
A statute declares law, and if enacted by the Legislature, must be initiated by a bill (Cal. Const., art. IV, § 8), passed with certain formalities and presented to the Governor for signature (Cal. Const., art. IV, § 10). Resolutions serve to express the views of the resolving body. A resolution does not require the same formality of enactment as a statute and is not presented to the Governor for approval. A resolution, as distinct from a statute, is essentially an enactment which only declares a public purpose and does not establish means to accomplish that purpose.

COUNSEL
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Douglas E. Mirell, Roger M. Witten, Wilmer, Cutler & Pickering, Steven L. Mayer and Howard, Rice, Nemerovski, Canady, Robertson & Falk as Amici Curiae on behalf of Petitioners.
John K. Van de Kamp, Attorney General, and N. Eugene Hill, Assistant Attorney General, for Respondents.
Nielsen, Hodgson, Parrinello & Mueller, John E. Mueller and Marguerite Mary Leoni for Real Party in Interest.
Ronald A. Zumbrun, John H. Findley, Jonathan M. Coupal, Robert A. Destro, Clint Bolick, Maxwell A. Miller, K. Preston Oade, Jr., and E. Robert Wallach as Amici Curiae on behalf of Real Party in Interest.

BROUSSARD, J.

This is an original petition for writ of mandate to order respondent Eu, the Secretary of State of the State of California, to refrain *691 from taking any action, including the expenditure of public funds, to place the proposed Balanced Federal Budget Statutory Initiative on the November 1984 ballot. [FN1] The principal effect of the proposed initiative would be to compel the California Legislature, on penalty of loss of salary, to apply to Congress to convene a constitutional convention for the limited and singular purpose of proposing an amendment to the United States Constitution requiring a balanced federal budget. If the Legislature fails to act, the Secretary of State is directed to apply directly to Congress on behalf of the people of the State of California.

FN1 The other respondents are Carl Olsen, San Francisco City Clerk, and Jay Patterson, San Francisco Registrar of Voters. Patterson has filed a disclaimer indicating that he does not intend to defend the suit.

The Fifth Article to the United States Constitution sets out two alternative methods of proposing constitutional amendments. [FN2] It provides in relevant part, that "[t]he Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress ...." [FN3]

FN2 For a discussion of the drafting of article V, see Dillinger, *The Recurring Question of the "Limited" Constitutional Convention*(1979) 88 Yale L.J. 1623, 1624-1630.

FN3 The remaining language in article V prohibited any amendment barring importation of slaves before 1808, and any amendment depriving a state of equal representation in the senate without its consent.

In the two centuries since the Constitution was promulgated, it has been amended only twenty-six times. Each of those amendments was proposed by the Congress. (All but one were ratified by state legislatures; the Twenty-first Amendment was ratified by state conventions.) Although there have been many efforts to call a constitutional convention to propose amendments, all have failed to secure applications by the legislatures of the necessary two-thirds of the states. [FN4]

FN4 See Brinkfield, Problems Relating to a Federal Constitutional Convention (1957) (Com. printing, House Judiciary Com., 85th Cong., 1st Sess.) The call for a convention to propose the direct election of senators came within one state of success, and may have induced Congress to submit the Seventeenth Amendment to the states for ratification.

In recent years a number of persons, including the current President, have urged the enactment of a constitutional amendment requiring a balanced federal budget. Numerous bills have been introduced in Congress. Although the Senate on one occasion approved a proposed constitutional amendment *692 by the necessary two-thirds vote, the measure failed in the House of Representatives; thus the proposed amendment has never been submitted to the states for ratification.

In the meantime, proponents of the amendment attempted to avoid the necessity for congressional

approval by resorting to the alternative method of proposing constitutional amendments - a convention called upon application of two-thirds of the states. As of this writing the legislatures in 32 of the necessary 34 states have formally applied to the Congress to call such a convention. [FN5]

FN5 The applications from the several states differ as to the exact content of the proposed amendment and the responsibilities of the proposed convention. It is not clear whether there are currently 32 valid applications pending for a constitutional convention.

Following this strategy, proponents have regularly introduced resolutions in the California Legislature calling for a convention to propose a balanced budget amendment. The Legislature has held hearings on some of these measures, but it has declined to adopt any resolution calling for a federal constitutional convention. The supporters of the balanced budget amendment now seek to compel action by the California Legislature by popular initiative. [FN6]

FN6 Similar initiatives are pending in at least two other states, Montana and Washington.

The proposed initiative reads as follows:

"Initiative Measure to Be Submitted Directly to the Voters. Section One. (a) The People of the State of California hereby mandate that the California Legislature adopt the following resolution and submit the same to the Congress of the United States under the provisions of Article V of the Constitution of the United States:

"That the Congress of the United States is urged to propose and submit to the several states an amendment to the Constitution of the United States to require, with certain exceptions, that the federal budget be balanced; and

"That application is hereby made to the Congress of the United States, pursuant to Article V of the Constitution of the United States, to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require, with certain exceptions, that the federal budget be balanced; and

"If the Congress of the United States proposes an amendment to the Constitution of the United States identical in subject matter to that contained *693 herein and submits same to the States for ratification, this application shall no longer be of any force and effect; and

"This application shall be deemed null and void, rescinded and of no effect in the event that such convention not be limited to such specific and exclusive purposes; and

"This application constitutes a continuing application in accordance with Article V of the Constitution of the United States until at least two-thirds of the several States have made similar applications pursuant to Article V of the United States Constitution;

"(b) The Secretary of the Senate is hereby directed to transmit copies of this application, upon its adoption by the California Legislature, to the President and Secretary of the United States Senate and the Speaker and Clerk of the House of Representatives of the Congress of the United States.

"Section Two. The following is added to sections 8901 through 8903 and section 9320 of the Government Code and shall modify, amend or control any other laws or regulations of the State of California similar in subject matter, heretofore or hereinafter enacted:

"... If the California Legislature fails to adopt the resolution set forth in Section One of [this] initiative measure and submit same to the Congress of the United States, as required therein, on or before the end of the twentieth (20th) legislative day after approval by the people of the said initiative measure, or if the legislature adjourns or recesses during the regular session prior to the twentieth (20th) legislative day without adopting said resolution, or having adopted same, repeals, rescinds, nullifies or contradicts said resolution, all payments, compensation, benefits, expenses, perquisites and any other payments to any member of the California Legislature made pursuant to this Section shall be suspended as to each and every legislator until such

time as the California Legislature adopts such resolution. ...

"Section Three. (a) The people of the State of California hereby adopt the resolution set forth in Section One of this initiative measure; and (b) If the California Legislature fails to adopt the resolution set forth in Section One of this initiative measure within forty (40) legislative days of the approval of this initiative measure, the Secretary of State of California shall transmit the resolution adopted pursuant to this Section to the President and Secretary of the United States Senate and the Speaker and Clerk of the House of Representatives of the Congress of the United States.

"Section Four. [Limits legislative amendment of the initiative.] *694

"Section Five. If any section or subsection of this initiative or the aforementioned resolution shall be held invalid, the remainder of the initiative and the aforementioned resolution, to the extent they can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable."

On March 18, 1984, respondent Secretary of State certified that the proposed initiative had received sufficient signatures to appear on the November 1984 ballot. Petitioners, organizations and individual California taxpayers opposed to the initiative, [FN7] filed an original action in this court for writ of mandamus. We scheduled a special calendar to consider the matter before the ballots were printed for the forthcoming election.

FN7 Petitioners are: American Federation of Labor-Congress of Industrial Organizations; American Association of University Women, California State Division; American Civil Liberties Union of Northern California; ACLU Foundation of Southern California; American Federation of State, County and Municipal Employees; American Jewish Committee; Americans United for Separation of Church and State; B'nai B'rith International; General Board of Church and Society, United Methodist Church; National Association for the Advancement of Colored People, Inc.; National Conference of Catholic Charities; National Council of La Raza; National Council of Senior Citizens; National Farmers Union; National Organization for Women; Office for Church in Society, United Church of Christ; Service Employees International Union; Edward J. Collins; Virginia Diogo; Rabbi Allen I. Freehling; and Timothy J. Twomey.

We have concluded that the initiative, to the extent that it applies for a constitutional convention or requires the Legislature to do so, does not conform to article V of the United States Constitution. Article V provides for applications by the "Legislatures of two-thirds of the several States," not by the people through the initiative; it envisions legislators free to vote their best judgment, responsible to their constituents through the electoral process, not puppet legislators coerced or compelled by loss of salary or otherwise to vote in favor of a proposal they may believe unwise.

We also conclude that the measure exceeds the scope of the initiative power under the controlling provisions of the California constitution (art. II, § 8 and art. IV, § 1). The initiative power is the power to adopt "statutes" [FN8] - to enact laws - but the crucial provisions of the balanced budget initiative do not adopt a *statute* or enact a law. They adopt, and mandate the Legislature to adopt, a *resolution* which does not change California law and constitutes only one step in a process which might eventually amend the federal Constitution. Such a resolution is not an exercise of legislative power reserved to the people under the California Constitution. *695

FN8 The initiative also includes the power to amend the state Constitution. The balanced budget initiative, however, was denominated as an "initiative statute," which requires the signatures of 5 percent of the registered voters. (Cal. Const., art. II, § 8.) An initiative which amends the state Constitution requires the signatures of 8 percent of the voters. (*Id.*)

Real party in interest argues that we should "let the people's voice be heard." Even if the initiative is invalid, he implies, the election will give the voters

the opportunity to express their views on the desirability of a balanced budget, and the legislators may respond to the outcome of the election. This argument misunderstands the purpose of the initiative in California. It is not a public opinion poll. It is a method of enacting legislation, and if the proposed measure does not enact legislation, or if it seeks to compel legislative action which the electorate has no power to compel, it should not be on the ballot.

We do not suggest that the voters of California are without a remedy. This is an election year, in which all members of the Assembly and one-half of the state senators are to be chosen. Voters for and voters against the balanced budget proposal have ample opportunity to make their views known to candidates for legislative seats, and the legislators will be able to act on those expressed views in future sessions.

I. *Propriety of Preelection Review*

One year ago we considered whether to issue a writ of mandamus to enjoin a special election called by the Governor to vote upon a proposed initiative measure redistricting the state Legislature. (*Legislature v. Deukmejian* (1983) 34 Cal.3d 658 [194 Cal.Rptr. 781, 669 P.2d 17].) Opponents of the initiative contended that redistricting could occur only once within the decade following a federal census, and thus that the initiative, which proposed a second redistricting within the same 10-year period, exceeded the legislative power reserved by the people. We agreed, and issued mandamus to bar the election.

Our opinion first discussed the propriety of preelection review. We began by reciting the general rule that "'it is usually more appropriate to review constitutional and other challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity. [Citations.]' (*Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4 [181 Cal.Rptr. 100, 641 P.2d 200].) That principle is a salutary one, and where appropriate we adhere to it." (34 Cal.3d at p. 665.) We then went on, however, to note Justice Mosk's separate opinion in *Brosnahan v. Eu, supra*. Justice Mosk had stated that the general rule inhibiting preelection review "applies only to the contention that an initiative is unconstitutional because of its substance. If it is determined that the electorate does not have the power to adopt the proposal in the first instance ... the measure must be excluded from the ballot." (31 Cal.3d at p. 6.) He cited examples to support this exception: "election officials have been ordered not to place *696 initiative and referendum proposals on the ballot on the ground that the electorate did not have the power to enact them since they were not legislative in character [citations], the subject was not a municipal affair [citations], or the proposal amounted to a revision of the Constitution rather than an amendment thereto [citation]." (*Id.*)

Our opinion in *Legislature v. Deukmejian, supra*, 34 Cal.3d 658 endorsed the standard described by Justice Mosk. "Here," we said, as in those cases cited by Justice Mosk, "the challenge goes to the power of the electorate to adopt the proposal in the first instance. ... The question raised is, in a sense, jurisdictional." (P. 667.) Since the issue raised by the Legislature challenged the power of the people to enact a second legislative redistricting within a single decade, we concluded that preelection review was proper. [FN9]

> FN9 The exercise of preelection review in *Legislature v. Deukmejian, supra* 34 Cal.3d 658, was not an unprecedented act. Previous decisions had barred elections on a state initiative measure (*McFadden v. Jordan* (1948) 32 Cal.2d 330 [196 P.2d 787]; *Gage v. Jordan* (1944) 23 Cal.2d 794 [147 P.2d 387]). Other court decisions have barred elections on local initiatives (e.g., *Simpson* v. *Hite* (1950) 36 Cal.2d 125 [222 P.2d 225]; *Mervynne* v. *Acker* (1961) 189 Cal.App.2d 558 [11 Cal.Rptr. 340]) and referenda (e.g., *Fishman v. City of Palo Alto* (1978) 86 Cal.App.3d 506 [150 Cal.Rptr. 326]).

(1) The present proceeding likewise challenges the power of the people to adopt the proposed initiative. The petitioners contend that under article V of the United States Constitution, the people have no constitutional authority to apply to the Congress for a constitutional convention, or to mandate their Legislature to submit such an application. They further contend that the proposed initiative is not

legislative in character, a well established ground for barring an initiative measure from the ballot (see *Simpson v. Hite, supra*, 36 Cal.2d 125, 129-134), and that it does not enact a statute as required by article II, section 8 of the state Constitution. [FN10]These contentions state proper grounds for preelection review of the proposed balanced budget initiative. [FN11]*697

FN10 We note also the legal and practical problems which might arise in postelection review. Section 3 of the initiative adopts a resolution applying for a constitutional convention; it is arguable that this adoption is effective immediately (cf. *Dillon v. Gloss* (1921) 256 U.S. 368, 376 [65 L.Ed. 994, 997, 41 S.Ct. 510]) and that the validity of that application thereafter is not an issue within the purview of the courts (see *Coleman v. Miller* (1939) 307 U.S. 433 [83 L.Ed. 1385, 59 S.Ct. 972, 122 A.L.R. 695]). The provisions of section 2 suspending legislative salaries go into effect 20 legislative days after the election. It would be possible for petitioners to file a petition for mandate and seek a stay within this period. But one usual argument for postelection review - that the court will have more time to consider the issues and decide the case - loses some force when the court will have to act on an application for provisional relief within a very limited time period following the election.

FN11 Language in some cases suggests that even if a proposed measure is within the scope of the initiative power, courts retain equitable discretion to examine the measure before the election upon a compelling showing that the substantive provisions of the initiative are clearly invalid. (See *Harnett v. County of Sacramento* (1925) 195 Cal. 676, 683 [235 P. 445]; *Gayle* v. *Hamm* (1972) 25 Cal.App.3d 250, 255 [101 Cal.Rptr. 628]; Note, *The Scope of the Initiative and Referendum in California* (1966) 54 Cal.L.Rev. 1717, 1725-1729.)We did not base our decision to hear the present case before the election upon that doctrine, but instead relied upon the principle that allegations charging that a measure exceeds the initiative power are properly justiciable before election.

Although real party in interest recites the principles of popular sovereignty which led to the establishment of the initiative and referendum in California, those principles do not disclose any value in putting before the people a measure which they have no power to enact. The presence of an invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure.

II. *Issues Arising Under Article V of the United States Constitution*

Our discussion of the federal constitutional issues proceeds in three steps. First, we inquire whether the term "Legislatures" as used in article V refers to the representative body elected to enact the laws of the state - in California, the state Senate and Assembly - or to the whole of the state legislative power, including the reserved power of initiative. Our conclusion that it refers only to the representative body makes it clear that the people cannot by initiative apply directly to Congress for a constitutional convention. We then turn to two remaining questions: whether the people by initiative can (a) compel the Legislature to apply to Congress for a constitutional convention or (b) urge Congress to submit a proposed amendment to the states.

(2) We must first, however, address briefly the contention raised by distinguished amici curiae (former Attorney General Griffin Bell, former Senator Sam Ervin, and Professor John Noonan) that none of the federal constitutional issues raised here is justiciable. They cite *Coleman* v. *Miller* (1939) 307 U.S. 433 [83 L.Ed. 1385, 59 S.Ct. 972, 122 A.L.R. 695], in which the court refused to adjudicate the validity of Kansas' ratification of the proposed Child Labor Amendment. The *Coleman* petitioners first challenged the authority of the lieutenant governor to break a tie vote on ratification; the court divided equally on the justiciability of that issue. They next asserted that having once rejected the amendment, Kansas could not later ratify; the court, relying on the

historical precedent of the Fourteenth Amendment, [FN12] held this to be a political question within the exclusive authority *698 of the Congress. Finally, petitioners argued that Kansas had not ratified the amendment within a reasonable time after it was submitted to the states. The court reaffirmed *Dillon v. Gloss, supra*, 256 U.S. 368, where it said that an amendment must be ratified within a reasonable time, but held that the timeliness of a particular ratification was also a political question entrusted to the Congress. Four concurring justices went further, asserting that "The [amending] process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point." (307 U.S. 433, 459 [83 L.Ed. 1385, 1399], conc. opn. of Black, J.)

> FN12 On July 20, 1868, the Secretary of State notified the Congress that three-fourths of the states had ratified the Fourteenth Amendment but that two states, Ohio and New Jersey, had subsequently rescinded their ratification. Congress was also aware that three southern states had initially refused to ratify until new state governments were created under congressional reconstruction programs. Congress nevertheless declared the Fourteenth Amendment duly ratified and a part of the Constitution.

The political question doctrine has undergone considerable change since *Coleman v. Miller*.(See *Powell* v. *McCormack* (1969) 395 U.S. 486 [23 L.Ed.2d 491, 89 S.Ct. 1944]; *Baker v. Carr* (1962) 369 U.S. 186 [7 L.Ed.2d 663, 82 S.Ct. 691].) Judges and commentators have questioned whether *Coleman v. Miller* is consistent with the criteria established in these later cases. (See *State of Idaho* v. *Freeman* (D.Idaho 1981) 529 F.Supp. 1107,vacated as moot, 459 U.S. 809 [74 L.Ed. 39,103 S.Ct. 22]; *Dyer v. Blair* (N.D.Ill. 1975) 390 F.Supp. 1291, 1300-1303; Note, *Good Intentions, New Inventions, and Article V Constitutional Conventions*(1979) 58 Tex.L.Rev. 131, 158-162.)

But assuming that *Coleman v. Miller* remains controlling authority on the issues it decided - that Congress alone has the power to decide whether a ratification submitted by a state is valid and timely - that holding does not control in the present setting. *Hawke* v. *Smith, No. 1* (1920) 253 U.S. 221 [64 L.Ed. 871, 40 S.Ct. 495, 10 A.L.R. 1504] (discussed at length later in this opinion (*post*, pp. 700-701)), is direct authority for the proposition that a court can remove a proposal from a state election ballot on the ground that it does not conform to article V, and by necessary inference that a court has authority to adjudicate that question. Contrary to the suggestion of amici, the majority opinion in *Coleman* v. *Miller* did not overrule *Hawke v. Smith*; it cited the earlier decision favorably on an issue of standing to sue (307 U.S. at pp. 438-449 [83 L.Ed. at pp. 1388-1394]), and never hinted that *Hawke v. Smith* decided a nonjusticiable issue.

In *Dyer v. Blair, supra*, 390 F.Supp. 1291, Judge Stevens, now a justice of the United States Supreme Court, considered the effect of *Coleman v. Miller* upon earlier Supreme Court article V decisions. The issue in that case was whether a state could constitutionally provide that more than a simple majority was required to ratify a constitutional amendment. Rejecting the argument that every aspect of the amending process is a nonjusticiable political question, Judge Stevens stated that "since a majority of the Court refused to accept that position in [*Coleman* v. *Miller*] and since the *699 Court has on several occasions decided questions arising under article V, even in the face of 'political question' contentions, that argument is not one which a District Court is free to accept." (Pp. 1299-1300.) In deciding questions of federal constitutional law, a state court is equally bound by the controlling Supreme Court decisions.

Judge Stevens went on to consider the question of justiciability in light of *Powell v. McCormack, supra*, 395 U.S. 486,*Baker v. Carr, supra*, 369 U.S. 186, and the majority opinion in *Coleman v. Miller, supra*.He distinguished *Coleman v. Miller*; that decision rested on the historical precedent of congressional adjudication of the effect of withdrawing a ratification, and the difficulty of determining what constituted a reasonable time for ratification. Such precedents and problems, he said, had no relevance to the issue in *Dyer* v. *Blair* - and, we must add, are equally irrelevant to the issue in the present case. Judge Stevens observed that "[d]ecision of the question presented requires no more than an interpretation of the Constitution. Such a decision

falls squarely within the traditional role of the ... judiciary. ... [¶] The mere fact that a court has little or nothing but the language of the Constitution as a guide to its interpretation does not mean that the task of construction is judicially unmanageable." (Pp. 1301-1302.) He then concluded: "We are persuaded that the word 'ratification' as used in article V of the federal Constitution must be interpreted with the kind of consistency that is characteristic of judicial, as opposed to political, decision making." (P. 1303.) We are similarly persuaded that the word "Legislatures" in article V is subject to judicial construction.

Concluding, therefore, that the issues here raised are justiciable, we turn to the task of construing the language of article V. The application clause of that article provides that "[t]he Congress ... on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments. ..." No reported decisions have decided whether the term "Legislatures" in this clause includes the reserved powers of initiative and referendum.[FN13] The term "Legislatures," however, also appears in the portion of article V which specifies that an amendment becomes "valid to all Intents and Purposes ... when ratified by the Legislatures of three-fourths *700 of the several States," and several cases have construed the meaning of "Legislatures" in this provision. We turn to examine these decisions.

FN13 Only two decisions have considered the application clause of article V. In *Petuskey v. Rampton* (D.Utah 1969) 307 F.Supp. 235, the district judge ruled that a malapportioned state legislature could not apply to Congress for a constitutional convention to propose an amendment overturning the Supreme Court's reapportionment decisions. The Tenth Circuit reversed the judgment on the ground that only a three-judge court would have jurisdiction to enjoin the state from transmitting its application to the Congress. (*Petuskey v. Rampton* (10th Cir. 1970) 431 F.2d 378,cert. den., 401 U.S. 913 [27 L.Ed.2d 812, 91 S.Ct. 882].) The second reported decision, *Opinion of the Justices to the Senate* (1977) 373 Mass. 877 [366 N.E.2d 1226], held that a governor could not veto an application by the legislature.

Many of the cases, including *Barlotti v. Lyons*, (1920) 182 Cal. 575 [189 P. 282], the only California case, concerned the ratification of the Eighteenth Amendment prohibiting the sale of alcohol. When the California Legislature ratified the amendment, Barlotti and other petitioners presented a referendum petition to the registrar of voters. The registrar refused to transmit the petition to the Secretary of State, and petitioners sought mandamus from this court. Our opinion noted two issues: whether the legislative ratification was conclusive under the federal Constitution, and whether the referendum provisions of the state Constitution were intended to apply to resolutions ratifying a constitutional amendment. It addressed only the federal issue, finding it decisive of the case.

Chief Justice Angellotti, for a unanimous court, defined the question narrowly, as "being simply one as to the meaning of the word 'legislatures' as used in the clause 'when ratified by *the legislatures* of three-fourths of the several states' of article V. ..." (P. 577.) "If by those words was meant the *representative bodies* invested with the law-making power of the several states, which existed at the time of the adoption of the constitution ... in each of the several states, and which have ever since so existed, as distinguished from the law-making power of the respective states, there is nothing left to discuss, for with that meaning attributed to the term ... the constitutional provision is so plain and unambiguous as not to admit of different constructions. The situation would then be that the people of the United States, in framing and ratifying the constitution ..., 'have excluded themselves from any direct or immediate agency in making amendments to it.'" (P. 578.)

The opinion first examined the ordinary meaning of the term. "It certainly is not in consonance with the ordinary acceptation of the term 'legislature' to take it as meaning otherwise than a representative body selected by the people of a state and invested with the power of law-making for the state, whatever be the power reserved to the people themselves to review the action of that body or to initiate and adopt laws." (P. 578.) It then examined the California Constitution, in which the word "legislature" appears frequently, always with the plain meaning of the Senate and Assembly. Even former article IV, section

1, which reserved the right of initiative and referendum, referred to the Senate and Assembly as "The Legislature of the State of California." The opinion reviewed the use of the term in the United States Constitution, observing that in almost all cases it clearly referred to a representative body. Consequently, the court concluded that the term "Legislatures" in article V means "some official body of a state as distinguished *701 from the state itself or the people of the state or the whole law-making power of the state." (P. 582.)

Chief Justice Angellotti recognized the argument that direct popular vote is a superior method of ascertaining the popular will. He replied that the argument "is, in the final analysis, based more upon some present day conceptions of what the law in this regard ought to be, than upon the intention of the framers of the constitution *as expressed therein*, and, to our mind, expressed so clearly as to preclude any other conclusion than the one we have reached." (P. 584.) The court accordingly dismissed the petition for mandamus, thereby precluding a referendum election on the ratification of the Eighteenth Amendment.

The courts of Maine and Michigan filed opinions agreeing with *Barlotti* that article V precludes a referendum on the ratification of a constitutional amendment (*Opinion of the Justices* (1919) 118 Me. 544 [107 A. 673, 5 A.L.R. 1412]; *Decher v. Secretary of State* (1920) 209 Mich. 565 [177 N.W. 388]), while Arkansas, Colorado, and Oregon reached the same result on state constitutional grounds (*Whittemore v. Terral* (1919) 140 Ark. 493 [215 S.W. 686]; *Prior* v. *Noland* (1920) 68 Colo. 263 [188 P. 729]; *Herbring v. Brown* (1919) 92 Ore. 176 [180 P. 328].) Ohio and Washington, however, upheld referendum elections. (*Hawke v. Smith* (1919) 100 Ohio St. 385 [126 N.E. 400]; *Mullen v. Howell* (1919) 107 Wash. 167 [181 P. 920].) The United States Supreme Court selected the Ohio decision for review and, in a unanimous decision, held unconstitutional a provision of the Ohio Constitution which declared that legislative ratification of a federal constitutional amendment was incomplete until approved by popular referendum. (*Hawke v. Smith, supra*, 253 U.S. 221.)

The opinion by Justice Day follows the same reasoning as that of our court in *Barlotti*.He first observes that "Both methods of ratification, by legislatures or conventions, call for action by deliberative assemblages representative of the people, which it was assumed would voice the will of the people. ... [¶] The framers of the Constitution might have adopted a different method. Ratification might have been left to a vote of the people. ... [However, the] language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed." (Pp. 226-227 [64 L.Ed. at p. 875].)

According to Justice Day, "The only question really for determination is: What did the framers of the Constitution mean in requiring ratification by '*Legislaturesss*'? That was not a term of uncertain meaning when incorporated into the Constitution. What it meant when adopted it still means for the *702 purpose of interpretation. A Legislature was then the representative body which made the laws of the people. The term is often used in the Constitution with this evident meaning. Article I, § 2, prescribes the qualifications of electors of congressmen as those 'requisite for electors of the most numerous branch of the state legislature.' Article I, § 3, provided that senators shall be chosen in each State by the legislature thereof, and this was the method of choosing senators until the adoption of the Seventeenth Amendment which made provision for the election of senators by vote of the people, the electors to have the qualifications requisite for electors of the most numerous branch of the state legislature. That Congress and the States understood that this election by the people was entirely distinct from legislative action is shown by the provision of the amendment giving the legislature of any State the power to authorize the Executive to make temporary appointments until the people shall fill the vacancies by election. It was never suggested, so far as we are aware, that the purpose of making the office of Senator elective by the people could be accomplished by a referendum vote. The necessity of the amendment to accomplish the purpose of popular election is shown in the adoption of the amendment. In Article IV the United States is required to protect every State against domestic violence upon application of the legislature, or of the Executive when the legislature cannot be convened. Article VI requires the members of the several legislatures to be bound by oath, or affirmation, to support the Constitution of the United States. By Article I, § 8, Congress is given exclusive jurisdiction over all

places purchased by the consent of the legislature of the State in which the same shall be. Article IV, § 3, provides that no new States shall be carved out of old States without the consent of the legislatures of the States concerned.

"There can be no question that the framers of the Constitution clearly understood and carefully used the terms in which that instrument referred to the action of the legislatures of the States. When they intended that direct action by the people should be had they were no less accurate in the use of apt phraseology to carry out such purpose. The members of the House of Representatives were required to be chosen by the people of the several States. Article I, § 2." (Pp. 227-228 [64 L.Ed. at pp. 875-876].) [FN14]

FN14 Article I, section 4 provides that the manner of electing senators and representatives "in each State shall be determined by the respective legislatures thereof, but that Congress may ... alter such regulations. ..." *Davis v. Hildebrant* (1916) 241 U.S. 565 [60 L.Ed. 1172, 36 S.Ct. 708], held that Ohio could submit a redistricting proposal to referendum. *Hawke v. Smith* distinguished that case on the ground that congressional legislation, enacted pursuant to this article, had granted each state the right to fix congressional districts in the manner provided by the laws thereof, language chosen for the purpose of permitting the initiative and referendum. (See 253 U.S. at pp. 230-231 [64 L.Ed. at p. 877].)

Ohio argued that the term "Legislatures" in article V referred to the legislative power of the state, however divided between representative assemblies *703 and the people. Justice Day responded that the argument was fallacious, because "ratification by a State of a constitutional amendment is not an act of legislation within the proper sense of the word. ... [¶] The act of ratification by the State derives its authority from the Federal Constitution to which the State and its people have alike assented." (Pp. 229-230 [64 L.Ed. at p. 876].) The court accordingly reversed the judgment requiring the submission of the ratification to popular referendum.

Many years have passed since *Barlotti* and *Hawke* were filed, but those decisions remain the unquestioned and controlling authority. (See *Opinion of the Justices to the Senate, supra*, 366 N.E.2d 1226.)Thus in 1975, when the California Attorney General was asked whether the voters by initiative could rescind the Legislature's ratification of the Equal Rights Amendment, he cited *Barlotti* and *Hawke*, and replied: "The California electorate cannot effectively rescind the Legislature's ratification by the initiative process because amendments to the federal constitution are not subject to the initiative or referendum process in California." (58 Ops.Cal.Atty.Gen. (1975) 830, 831.)

As we noted earlier, the cited cases refer to the role of the Legislature in ratifying, not in proposing, constitutional amendments. Courts and commentators agree, however, that the term "Legislatures" bears the same meaning throughout article V. The Massachusetts Supreme Judicial Court, in holding that a governor cannot veto an application for a constitutional convention, declared that "[s]ince the word 'Legislatures' in the ratification clause of Art. V does not mean the whole legislative process of the State ..., we are of the opinion that the word 'Legislatures' in the application clause, likewise, does not mean the whole legislative process." (*Opinion of the Justices, supra*, 366 N.E.2d 1226, 1228.)Senator Ervin, explaining proposed legislation to regulate a constitutional convention, stated that "[c]ertainly the term 'legislature' should have the same meaning in both the application clause and the ratification clause of Article V." (Ervin, *Proposed Legislation to Implement the Convention Method of Amending the Constitution* (1968) 66 Mich.L.Rev. 875, 889; see Bonfield, *Proposing Constitutional Amendments by Convention* (1969) 39 N.D. L.Rev. 659, 665.)

(3) We conclude that when article V refers to an application by the "Legislatures" of two-thirds of the states, calling for a constitutional convention, it refers to the representative lawmaking bodies in those states. Any application directly by the people, through their reserved legislative power, would not conform to article V.

Section 3 of the Balanced Budget Initiative states that the people adopt a resolution calling for a constitutional convention, and provides that, if the *704 Legislature fails to adopt the resolution within 40 legislative days, the Secretary of State shall

transmit the resolution so adopted to the Congress. Under the decisions previously discussed, it seems clear that a resolution adopted directly by the people and transmitted to Congress without action by the Legislature would be invalid under article V.

The initiative, however, proposes direct action, bypassing the Legislature, only as a last resort. The thrust of the measure is in the provision mandating the Legislature to adopt a resolution applying for a constitutional convention. (4) The question thus arises whether pro forma action by a state legislature, acting under compulsion of an initiative measure, is sufficient to comply with article V.

The question itself is one of first impression, but a number of decisions offer guidance. The ratification of the Nineteenth Amendment, giving women the right to vote, was challenged on the ground that two state legislatures ratified in violation of state constitutional provisions restricting their freedom of action. The Missouri Constitution provided that the state legislature could not assent to any amendment that would impair the right to local self-government; the Tennessee Constitution provided that the legislature could not act upon any amendment until an election intervened. The Supreme Court rejected the challenge, holding that "[t]he function of a state legislature in ratifying a proposed amendment to the Federal Constitution ... is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State." (*Leser v. Garnett* (1922) 258 U.S. 130, 137 [66 L.Ed. 505, 511, 42 S.Ct. 217]; see also *Trombetta v. Florida* (M.D. Fla. 1973) 353 F.Supp. 575; *Walker* v. *Dunn* (Tenn. 1972) 498 S.W.2d 102.)If a state cannot constitutionally prohibit its legislature from proposing or ratifying a constitutional amendment, by implication it cannot compel the legislature to do so.

Two other cases involve advisory initiatives. In 1928 the Massachusetts Supreme Judicial Court was asked to rule upon a proposed initiative requesting the state's congressional delegation to support repeal of the Eighteenth Amendment. The court held that the measure was not a proper initiative on both state and federal grounds, stating, in connection with the latter ground, that "[t]he voters of the several States are excluded by the terms of art. 5 of the Constitution of the United States from participation in the process of its amendment." (*Opinion of the Justices* (1928) 262 Mass. 603, 606 [160 N.E. 439].)

Fifty years later the Nevada Supreme Court considered an initiative advising the state legislature whether to ratify the Equal Rights Amendment. The court distinguished *Hawke v. Smith, supra*, 253 U.S. 221, and *Leser**705 v. *Garnett, supra*, 258 U.S. 130 on the ground that the proposal "does not concern a binding referendum, nor does it impose a limitation upon the legislature. ... [T]he legislature may vote for or against ratification, or refrain from voting on ratification at all, without regard to the advisory vote." (*Kimble v. Swackhamer* (1978) 94 Nev. 600 [584 P.2d 161, 162].)

When opponents of the Nevada initiative sought a stay from the United States Supreme Court, Justice Rehnquist, sitting as circuit justice, denied the stay with the following order: "Appellants' ... contention ... is in my opinion not substantial because of the nonbinding character of the referendum. ... Under these circumstances ... reliance [on] ... *Leser v. Garnett* ... and *Hawke v. Smith* ... is obviously misplaced. ... I can see no constitutional obstacle to a nonbinding advisory referendum of this sort." (*Kimble v. Swackhamer* (1978) 439 U.S. 1385, 1387-1388 [58 L.Ed.2d 225, 228, 99 S.Ct. 51].)

The Massachusetts and Nevada cases squarely disagree on the validity of a nonbinding initiative, but both cases (and especially Justice Rehnquist's order) clearly imply that a binding initiative would offend article V. Real party in interest, however, cites a decision with contrary implications, *In re Opinions of the Justices* (1933) 226 Ala. 565 [148 So. 107]. The Alabama Supreme Court was asked to rule on a proposed statute requiring that delegates to a convention to ratify the Twenty-first Amendment pledge to follow the result of a statewide vote. Quoting *Hawke v. Smith, supra*, 253 U.S. 221, 226-227 [64 L.Ed. 871, 875], where the court said the framers of the Constitution "assumed" that legislatures and conventions "would voice the will of the people," the Alabama court reasoned that the function of deliberative bodies in ratifying proposed amendments was merely to ascertain and carry out the popular will. A direct and binding instruction to the delegates, it concluded, would more truly and efficiently fulfill that function. [FN15]

FN15 Real party in interest also cites *In re*

> *Opinions of the Justices* (1933) 204 N.C. 806 [172 S.E. 474]. That decision upheld the validity of a proposed bill which would have allowed the voters to decide whether to call a state convention to consider ratification of the Twenty-first Amendment. It does not appear that the delegates to such a convention, if called, were required to vote one way or the other on the ratification.

We question whether the reasoning of the Alabama court applies to the act of a legislature in proposing or ratifying an amendment. The analysis of the federal Constitution set out in *Barlotti* and *Hawke* indicates that the drafters of that document deliberately chose to vest the power of proposal and ratification in state legislatures instead of the people. The framers were, of course, aware of the difference between a representative body and the electorate as a whole; they knew that a legislature is a deliberative body, *706 empowered to conduct hearings, examine evidence, and debate propositions. Its members may be assumed generally to hold views reflecting the popular will, but no one expects legislators to agree with their constituents on every measure coming before that body. Yet, although undoubtedly aware that the views of a deliberative body concerning a proposed amendment might depart from those of a majority of the voters, the framers of the Constitution chose to give the voters no direct role in the amending process; legislatures alone received the power to apply for a national convention, and legislatures or conventions, as Congress chose, the power to ratify amendments. [FN16]

> FN16 It has been argued that the framers of the Constitution considered state conventions to be more representative than state legislatures, and for that reason directed that the ratification of the original Constitution be by conventions. (See discussion in *United States v. Sprague* (1931) 282 U.S. 716, 731 [75 L.Ed. 640, 644, 71 A.L.R. 1381].) If so, it is significant that the wording of article V permits Congress to choose between ratification by the more representative convention or the less representative legislature, but permits only the legislature to apply for a national convention.

The only conclusion we can draw from this fact is that the drafters wanted the amending process in the hands of a body with the power to deliberate upon a proposed amendment and, after considering not only the views of the people but the merits of the proposition, to render a considered judgment. A rubber stamp legislature could not fulfill its function under article V of the Constitution.

We conclude that a state may not, by initiative or otherwise, compel its legislators to apply for a constitutional convention, or to refrain from such action. Under article V, the legislators must be free to vote their own considered judgment, being responsible to their constituents through the electoral process. The proposed Balanced Budget Initiative, to the extent that it mandates the California Legislature to apply to Congress for a constitutional convention, violates article V of the United States Constitution.

The resolution set out in section 1 of the initiative includes language which merely petitions Congress to adopt a balanced budget amendment, and does not attempt to invoke the application process of article V. Since that language does not purport to bind Congress or the state Legislature to undertake any act of legal significance under article V, it is analogous to the advisory initiatives discussed earlier in this opinion. (*Ante*, pp. 704-705.) As we there noted, the decisions conflict, with one case (*Opinion of the Justices, supra*, 262 Mass. 603) ruling that an advisory initiative violates article V, but a later decision (*Kimble v. Swackhamer, supra*, 584 P.2d 616) upholding such an initiative. *707

(5) A resolution, whether by the Legislature or by the people, urging Congress to approve a proposed constitutional amendment is not an act of constitutional significance. Such a resolution does not call for a national convention, propose an amendment, or ratify an amendment. We therefore conclude, in accord with *Kimble v. Swackhamer*, that such a resolution does not raise any issue under the federal Constitution. It follows that the Balanced Budget Initiative, insofar as it merely adopts a resolution urging Congress to submit a constitutional amendment to the states, and mandates the Legislature to adopt that resolution, does not offend article V.

Our conclusion that the crucial provisions of the

initiative measure are invalid under the United States Constitution, but that other, subordinate provisions are not, necessarily raises a question of severability. Since the same question arises in connection with our analysis of the state constitutional issues, we defer discussion of the matter until later in this opinion.

III. *Issues Arising Under the California Constitution*

The Balanced Budget Initiative contains three substantive sections. At the core of the initiative is the resolution set out in section 1, which calls upon Congress to submit a balanced budget amendment, and applies to Congress for a constitutional convention to propose such an amendment. Section 1 then mandates the Legislature to adopt this resolution. Section 2 provides that if the Legislature does not comply within 20 legislative days, the legislators' compensation is suspended. Section 3 provides for adoption of the resolution by the people, and directs the Secretary of State to transmit it to Congress if the Legislature fails to adopt it within 40 legislative days.

Article IV, section 1 of the California Constitution declares that "[t]he legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum." Article II, section 8, subdivision (a) defines the initiative: "The initiative is the power of the electors to propose *statutes* and amendments to the Constitution and to adopt or reject them." (Italics added.) [FN17] Article II, section 9 defines the referendum in similar terms; it is "the power of the electors to approve or reject *statutes*." (Italics added.)

> FN17 The phrase "amendments to the Constitution" in article II refers to amendments to the state Constitution, and has no application to the present case.

Prior to the 1966 revision of the California Constitution, the relevant provision (then part of art. IV, § 1) reserved to the people the power to propose "laws" (the initiative) or to reject any "acts" passed by the Legislature *708 (the referendum). The California Constitution Revision Commission selected the term "statutes" as a simpler statement of the reserved power, without a change in meaning. (Cal. Const. Revision Com., Proposed Revision Const. (1966) p. 43.) The 1966 revision also amended article IV, section 15 (now art. IV, § 8, subd. (b)), which had declared in part that "No law shall be passed except by bill"; the new version reads "The Legislature may make no law except by statute and may enact no statute except by bill." [FN18]

> FN18 Before the 1966 revision the California Constitution also provided for the "indirect initiative." (See former art. IV, § 1, ¶ 4.) The voters could propose a bill to the Legislature, and if the Legislature failed to enact that bill within 40 days, the matter was resubmitted to the voters for approval or rejection at the next general election. The 1966 Report of the California Constitution Revision Commission recommended deleting this provision, noting that it added an unnecessary step in the initiative process, and as a result was seldom used. (P. 52.)

(6a) The question we face is whether the Balanced Budget Initiative proposes to adopt a "statute" within the meaning of article II of the California Constitution. (7) In resolving this question, we must bear in mind the declared "duty of the courts to jealously guard" the people's right of initiative and referendum. (*Martin* v. *Smith* (1959) 176 Cal.App.2d 115, 117 [1 Cal.Rptr. 307]; *Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038].) "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled." (*Mervynne v. Acker*, *supra*, 189 Cal.App.2d 558, 563; *Gayle v. Hamm*, *supra*, 25 Cal.App.3d 250, 258; *Associated Home Builders, Inc. v. City of Livermore*, *supra*, 18 Cal.3d 582, 591; see *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 219 [149 Cal.Rptr. 239, 583 P.2d 1281]; *San Diego Bldg. Contractors Assn. v. City Council* (1974) 13 Cal.3d 205, 210, fn. 3 [118 Cal.Rptr. 146, 529 P.2d 570, 72 A.L.R.3d 973], app. dism. 427 U.S. 901 [49 L.Ed.2d 1195, 96 S.Ct. 3184].)

(8) Even under the most liberal interpretation, however, the reserved powers of initiative and referendum do not encompass all possible actions of a legislative body. Those powers are limited, under article II, to the adoption or rejection of "statutes." As

we shall explain, it does not include a resolution which merely expresses the wishes of the enacting body, whether that expression is purely precatory or serves as one step in a process which may lead to a federal constitutional amendment.

(9) A statute declares law; if enacted by the Legislature it must be initiated by a bill (Cal. Const., art. IV, § 8), passed with certain formalities *709 (*id.*), and presented to the Governor for signature (art. IV, § 10). Resolutions serve, among other purposes, to express the views of the resolving body. (See Mason, *Legislative Bill Drafting* (1926) 14 Cal.L.Rev. 379, 389-391.)A resolution does not require the same formality of enactment, and is not presented to the Governor for approval. [FN19]

FN19 In one California case, *Mullan* v. *State* (1896) 114 Cal. 578 [46 P. 670], the distinction between a statute and a resolution proved a trap for the litigant. The Legislature, on request of the Governor, had passed a joint resolution authorizing Captain Mullan to negotiate with the federal government for reimbursement of state expenses and claims arising out of the Moduc Indian War. The resolution provided for payment to Captain Mullan of 20 percent of the amount collected, and when payment was not made, Mullan filed suit. Citing article IV, section 15, which then provided that "No law shall be passed except by bill," the court denied his claim. "A mere resolution," it said, "is not a competent method of expressing the legislative will, where that expression is to have the force of law, and bind others than the members of the house or houses adopting it. The fact that it may have been intended to subserve such purpose can make no difference. ... 'Nothing becomes law simply and solely because men, who possess the legislative power will that it shall be, unless they express their determination to that effect in the mode appointed by the instrument which invests them with power, and under all the forms which that instrument has rendered essential.'" (Pp. 584-585.)

"It is frequently said that the distinction between bills and resolutions is that resolutions are not law. As a generalization this is probably accurate, if by 'law' is meant those legislative actions which operate on all persons in society, and must be enforced by the executive department, and sustained by the judiciary." (1A Sutherland, Statutory Construction (Sands rev. ed. 1972) p. 335.) The writer adds that "In Congress and some of the states joint resolutions enacted with all the formalities of bills operate as law" (*id.*), but states in a footnote that in most states, including California, "specific constitutional provisions prevent a resolution from being treated as a law." (P. 336, fn. 4.) [FN20]

FN20 Two opinions of the California Attorney General comment on this matter. In 1943, the Assembly resolved that a government department should undertake a study of the Los Angeles Airport; the department inquired whether it could use certain funds for that purpose. The Attorney General replied "A resolution of a single house of the legislature, or for that matter, a concurrent resolution, does not have the force and effect of law. ... [An appropriation] can only be accomplished by a regular statute. ..." (1 Ops.Cal.Atty.Gen. 438, 439 (1943).) Three years later the Attorney General repeated: "The Constitution, with certain exceptions, provides that no law shall be passed except by bill. [Citation.] A resolution merely expresses the views of both branches of the Legislature." (7 Ops.Cal.Atty.Gen. 381, 382 (1946).)

In *Hopping v. Council of City of Richmond* (1915) 170 Cal. 605 [150 P. 977], the court applied this distinction to a municipal referendum. It first declared that the referendum under state law applied only to "acts which must be passed in the form of a statute" (p. 609), as distinguished from a joint resolution, and construed the Richmond City Charter to conform to state practice. This language would seem to foreshadow the invalidity of the *710 referendum, but the court then looked more closely at the resolution in question. The city council had resolved to accept a gift of land and money, but that gift was conditioned upon the city using the money (and additional city funds) to build a new city hall on the site donated. Viewing this resolution as the equivalent of an ordinance fixing the site of the city

hall and appropriating money for its construction - an exercise of legislative power - the court held the resolution subject to referendum. (See pp. 613-615.) In other words, it is the substance, not the label, that controls, and if a "resolution" does enact a law, it is subject to referendum.

The decisions of other states, involving the ratification of the Eighteenth Amendment discussed earlier in this opinion (*ante*, pp. 700-701), addressed the specific question whether a resolution ratifying a constitutional amendment falls within the reserved power of initiative and referendum. (*Barlotti v. Lyons*, *supra*, 182 Cal. 575, the California decision concerning the Eighteenth Amendment, noted but did not decide the question whether a resolution ratifying a constitutional amendment was within the reserved power of referendum.) The majority of decisions, construing state constitutional provisions indistinguishable from the California provision, have concluded that such a resolution is not subject to popular vote.

Whittemore v. Terral, *supra*, 140 Ark. 493, held that the word "acts" in the Arkansas Constitution (the same word as in the pre-1966 Cal. Const.) "means an enacted law - a statute." (Pp. 497-498.) The ratification of a proposed constitutional amendment, the court said, is but a step in the enactment of a law; it does not in itself enact a law and is thus not subject to referendum. (P. 499.)

The court also construed the word "acts" in *Prior v. Noland*, *supra*, 68 Colo. 263. "It is only in the sense of a law, a statute that the term 'act' is used in the initiative and referendum." (P. 267.) Noting that the term is used in connection with "bill" - as it also was in the pre-1966 California provisions - the court stated that "A resolution is not a bill. [Citation.] The distinctions between a bill and a resolution are well defined. ... 'The concurrent resolution ... cannot be held to be a law of the state.'" (*Id.*)

In *Decher v. Secretary of State*, *supra*, 209 Mich. 565, the court concluded that "the framers of the [Michigan] Constitution, by the use of the word 'act' ... had in mind a statute or law passed with the formality required by the Constitution and approved by the governor." (Pp. 576-577.) The act of the state legislature in ratifying a federal constitutional amendment "is not the making of a law or an 'act' as understood in legislative parlance." (P. 577.) *711

The Maine Supreme Court likewise declared that the resolution ratifying the Eighteenth Amendment was not subject to referendum because it "was neither a public act, a private act nor a resolve having the force of law. It was in no sense legislation." (*Opinion of the Justices*, *supra*, 118 Me. 544, 550.) Finally, the Oregon Supreme Court, in *Herbring v. Brown*, *supra*, 92 Ore. 176, concluded that "these sections [establishing the initiative and referendum] apply only to proposed laws, and not to legislative resolutions, memorials, and the like." (P. 180.) [FN21]

FN21 The only contrary decision came from the Washington Supreme Court. (*Mullen v. Howell*, *supra*, 181 P. 920.) That court reasoned that the argument that the legislature ratified the amendment by resolution and that a resolution was not subject to referendum was self-defeating because under the state constitution the legislature had no power to act except by bill. (This argument assumes that a state legislature's power to ratify a federal constitutional amendment derives from the state constitution and is subject to limitations in the document; *Leser v. Garnett*, *supra*, 258 U.S. 130, held to the contrary.) The Washington court further reasoned that it was not the resolution, but the act of the legislature in adopting it, that was subject to referendum.

Eight years after the Eighteenth Amendment took effect, the Massachusetts Supreme Judicial Court considered whether an initiative requesting the state's congressional delegation to support repeal of that amendment constituted a "proposed law" within the state's initiative power. "The word 'law'," the justices advised, "imports a general rule of conduct with appropriate means for its enforcement declared by some authority possessing sovereign power over the subject; it implies command and not entreaty; it is something different from an ineffectual expression of opinion possessing no sanction to compel observance of the views announced. The text of the proposed law accompanying this initiative petition does not prescribe a general rule of conduct. It merely invites a declaration of opinion by voters on a subject over which the people of the Commonwealth possess no

part of the sovereign power." (262 Mass. at p. 605.)The court concluded that the proposal was not within the reserved initiative power. [FN22]

> FN22 The opinion also noted that "[t]he mandate to the Secretary of the Commonwealth ... to 'transmit copies ... to each senator and representative in congress from this commonwealth' is subsidiary and incidental to the main purpose of the proposed law; it relates to a matter which standing alone possesses no legal force; it cannot convert into a law something in itself ineffectual." (262 Mass. at p. 606.)

Thus as of the 1920's, the majority view was that under constitutional provisions such as that in California, the reserved power of initiative and referendum was limited to such measures as constituted the exercise of legislative power to create binding law - the kind of measure that would be introduced by bill, duly passed by both houses of the legislature, and presented to the governor for signature. That reserved power did not extend to the ratification of constitutional amendments, since a state in ratifying an amendment was not asserting legislative power under its own constitution, *712 but exercising a power delegated to the state legislatures by article V of the federal Constitution. (See *Leser* v. *Garnett, supra*, 258 U.S. 130, 137 [66 L.Ed. 505, 511].) Neither did that power extend to resolutions which merely declared policy or entreated action, since such enactments did not constitute the exercise of legislative power to create statutory law. [FN23]

> FN23 The issue in this guise - the distinction between a statute (or an "act," a "law," or a "bill") and a resolution has not arisen since that date. Subsequent cases have concerned the question whether a measure was "legislative," "administrative," or "adjudicative." (See, e.g., *Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511 [169 Cal.Rptr. 904, 620 P.2d 565]; *Housing Authority v. Superior Court* (1950) 35 Cal.2d 550 [219 P.2d 457]; *Simpson v. Hite, supra*, 36 Cal.2d 125; *Fishman v. City of Palo Alto, supra*, 86 Cal.App.3d 506; *O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774 [42 Cal.Rptr. 283]; *Mervynne v. Acker, supra*, 189 Cal.App.2d 558.) These cases assert generally that legislative acts "are those which declare a public purpose and make provisions for the ways and means of its accomplishment." (*Fishman* v. *City of Palo Alto, supra*, 86 Cal.App.3d 506, 509; accord, *O'Loane* v. *O'Rourke, supra*, 231 Cal.App.2d 774, 784.) That definition was fashioned to distinguish administrative acts, which "carry out the legislative policies and purposes already declared by the legislative body" (*Fishman v. City of Palo Alto, supra*, 86 Cal.App.3d at p. 509). It will serve in the present context, however, because a resolution, as distinct from a statute, is essentially an enactment which only declares a public purpose and does not establish means to accomplish that purpose.

Real party in interest, however, contends that current California practice and decisions permit an initiative which merely declares public policy. He points to Proposition 12 at the 1982 General Election, which endorsed a bilateral freeze on the construction of nuclear weapons and required the Governor to transmit that endorsement to the President and other federal officials. No judicial decision discussed the validity of the Nuclear Freeze Initiative, but real party suggests that policy initiative was justified by two earlier decisions, *Farley v. Healey* (1967) 67 Cal.2d 325 [62 Cal.Rptr. 26, 431 P.2d 650], and *Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315 [118 Cal.Rptr. 637, 530 P.2d 605].

Farley v. Healey, supra, involved a San Francisco city initiative which declared city policy favoring an immediate ceasefire in Vietnam and withdrawal of American troops from that country. The San Francisco City Charter defined the right of initiative with unusual breadth: it included the power to adopt "any ordinance, act or other measure which is within the power conferred upon the board of supervisors to enact," and provided that "[a]ny declaration of policy may be submitted to the electors in the manner provided for the submission of ordinances. ..." (P. 328, quoting S. F. City Charter, § 179.) Consequently, the court rejected the argument that the initiative was invalid because it did not concern a municipal affair. "[B]oards of supervisors and city councils have traditionally made declarations of policy on matters of concern to the community

whether or not they had power to effectuate such declarations by binding legislation." *713 (P. 328.) Thus the proposed declaration of policy, being within the power of the board of supervisors, could be enacted by initiative under the terms of the city charter.

Two later opinions of the California Attorney General indicated that *Farley v. Healey* did not state legal principles applicable to California initiatives generally, but was based on the specific language of the San Francisco Charter. In 1973 the voters in Humboldt County proposed to "direct the Board of Supervisors to notify the Congress and the President ... of our desire to see a terminal date set for the withdrawal of all United States equipment and personnel from South East Asia. ..." The Attorney General, responding to a request from the Humboldt County Counsel, advised that "[s]uch a measure is not a proper subject for an initiative by the people of a county under the [California] Constitution and general laws for county government." (56 Ops.Cal.Atty.Gen. 61, 62 (1973)) because it did not constitute legislation but instead "requests the adoption of an nonlegislative resolution ... relating to matters outside the purview of the county government." (*Id.*, at p. 63.)He distinguished *Farley v. Healey* on the ground that under the San Francisco Charter an initiative measure did not have to be a legislative act. (P. 64.)

Two years later the Attorney General referred to his earlier opinion. In that opinion, he said, "this office distinguished the language of the San Francisco charter from the definition of 'initiative' in the California Constitution. [Citation.] In determining that local initiatives in general law counties cannot be used for policy declarations, inferentially we indicated that the statewide initiative is not available for such purposes either." (58 Ops.Cal.Atty.Gen. 830, 831, fn. 2 (1975).)

The second case on which proponents rely is *Santa Barbara Sch. Dist.* v. *Superior Court*, *supra*, 13 Cal.3d 315. A state initiative, Proposition 21, repealed Education Code sections 5002 and 5003, which directed school districts to eliminate racial imbalance, and added section 1009.6 to prohibit mandatory busing. In upholding the portion of the initiative repealing sections 5002 and 5003, we stated that "the people of California through the initiative process ... have the power to declare state policy. The repealing provisions of Proposition 21 can conceivably be interpreted as an expression by the people ... their preference for a 'neighborhood school policy.'" (P. 330.) The specific provisions upheld, however, did not declare policy except by inference; they simply repealed two specific sections of the Education Code. Whatever policies motivated that repeal, it is clear that Proposition 21 took statutory form.

The cited cases, thus, are consistent with the conclusion we drew earlier - that the function of the initiative under the California Constitution is to enact *714 (or repeal) statutes. The statute may declare policy as well as provide for its implementation. Indeed it is common for statutes, including initiative statutes, to contain a section which declares policy and provides a guide to the implementation of the substantive provisions of the measure.[FN24] But an initiative which seeks to do something other than enact a statute - which seeks to render an administrative decision, adjudicate a dispute, or declare by resolution the views of the resolving body - is not within the initiative power reserved by the people.

> FN24. The distinction between a declaration of policy which takes statutory form and one that does not is functional as well as formal. In the former case, the declaration of policy can be cited and relied upon by administrators and courts in the interpretation and application of other statutory provisions. A declaration which merely requests action by Congress, and which relates to a matter beyond the state's legislative jurisdiction, can have no such legal effect.

We now turn to apply this analysis to the Balanced Budget Initiative.Section 1 of the initiative mandates the Legislature to adopt a resolution calling upon Congress to propose a balanced budget amendment, and applying for a constitutional convention to propose such an amendment. This section is in form neither a statute nor a resolution, but a cross between the indirect initiative repealed in 1966 (see fn. 20, *ante*) and a writ of mandamus. The distinction between an initiative which enacts a statute and one which commands the Legislature to

do so is a narrow one, but may be constitutionally significant. If the people have the power to enact a measure by initiative, they should do so directly; if the people lack a power entrusted solely to the Legislature, they should not be permitted to circumvent that limitation. In any event, section 1 does not mandate the Legislature to enact a statute, but to adopt a resolution. That resolution is in part a simple declaration of policy, without statutory implementation, and in part a step in a federal process which may eventually lead to amendment of the federal Constitution. It does not create law and thus, under the authorities and analysis we have examined, does not "adopt" a "statute" within the meaning of article II of the California Constitution.

Section 2 of the initiative proposes to amend sections 8901 through 8903 and section 9320 of the Government Code relating to the payment of legislators' salaries. This section takes the form of a statutory enactment and, standing alone, could not be criticized on the ground that it fails to "adopt" a "statute" within the scope of article II. [FN25] Section 2, however, simply *715 provides a sanction, suspension of legislators' compensation, which goes into effect only if the Legislature fails to comply with section 1 within 20 legislative days. Consequently if section 1 is invalid, section 2 falls with it; it cannot be severed to obtain independent life.

FN25 Section 2 states that if the Legislature fails to adopt the prescribed resolution within 20 legislative days, all payments to legislators shall be suspended until the resolution is adopted. Petitioners claim this section violates three provisions of the California Constitution: (1) article III, section 4, which provides that "salaries of elected state officials may not be reduced during their term of office"; (2) article IV, section 4, which provides that any adjustment in the compensation of members of the Legislature "may not apply until the commencement of the regular session commencing after the next general election following enactment of the statute [adjusting the compensation]"; and article IV, section 15, which makes it a felony to seek to "influence the vote or action of a member of the Legislature in the member's legislative capacity by bribery, promise of reward, intimidation, or other dishonest means." Arguments of this character, which go to the substance of the initiative instead of the people's power to enact the measure, ordinarily would not justify preelection review. Moreover, even if section 2 were found invalid on one of these grounds, section 2 is severable in this respect. We would still face the question whether the people could mandate the Legislature to adopt a resolution calling for a constitutional convention, even if the specified means of enforcement were improper. We have therefore not attempted to analyze in depth or to resolve the substantive issues presented concerning the constitutionality of section 2 of the initiative.

Finally, section 3, the remaining substantive provision of the initiative, adopts a resolution calling upon Congress to propose a balanced budget amendment, and directs the Secretary of State to apply for a constitutional convention. We previously held that this application is invalid under article V of the federal Constitution. (See *ante* at pp. 703-704.) We now observe, in addition, that the adoption of this resolution under section 3 of the initiative does not constitute the adoption of a "statute," and thus does not fall within the scope of the initiative power under article II.

(6b) We therefore conclude that the Balanced Budget Initiative is invalid as a whole because it fails to adopt a statute, and thus does not fall within the reserved initiative power as set out in article II of the California Constitution. We acknowledge the arguments of the proponents that there may be value to permitting the people by direct vote not only to adopt statutes, but also to adopt resolutions, declare policy, and make known their views upon matters of statewide, national, or even international concern. Such initiatives, while not having the force of law, could nevertheless guide the lawmakers in future decisions. Indeed it may well be that the declaration of broad statements of policy is a more suitable use for the initiative than the enactment of detailed and technical statutes. Under the terms of the California Constitution, however, the initiative does not serve those hortatory objectives; it functions instead as a reserved legislative power, a method of enacting statutory law. The present initiative does not conform

to that model.

Even if we could uphold a portion of section 3 on the theory that the term "statute" in article II could be liberally construed to include a policy resolution, we would still be impelled to exclude the initiative from the ballot. The most important parts of the initiative, the provisions in section 1 mandating *716 legislative action and the part of section 3 applying for a constitutional convention, would still be invalid. Section 2 would be inoperative, since the invalidity of the legislative mandate necessarily implies the invalidity of a salary suspension intended to coerce compliance with that mandate. Under such circumstances, to submit the measure to the voters without redrafting would confuse the electorate and mislead many voters into casting their ballot on the basis of provisions which had already been found invalid. As the court explained in *People's Lobby Inc.* v. *Board of Supervisors* (1973) 30 Cal.App.3d 869, 874 [106 Cal.Rptr. 666], [FN26] "to order the proposal to be placed on the ballot when only a small part of it could be valid would be using the writ of mandate for the purpose of misleading the voters." (See also *Alexander* v. *Mitchell* (1953) 119 Cal.App.2d 816, 829-830 [260 P.2d 261]; *Bennett* v. *Drullard* (1915) 27 Cal.App. 180, 186-187 [149 P. 368].) [FN27]

FN26 Disapproved on other grounds in *Associated Home Builders* v. *City of Livermore, supra*, 18 Cal.3d 582, 596, footnote 14.

FN27 Our decision in *Santa Barbara Sch. Dist.* v. *Superior Court, supra*, 13 Cal.3d 315, rejected the argument that a different test of severability applies to initiative measures than to ordinary statutes passed by the Legislature. (See p. 332, fn. 7.) That case, however, involved postelection review of an initiative, and used language which left open the test of severability in preelection review. (See *ibid.*)On this matter, we think the timing does make a difference. After the election, no harm ensues if the court upholds a mechanically severable provision of an initiative, even if most of the provisions of the act are invalid. In a preelection opinion, however, it would constitute a deception on the voters for a court to permit a measure to remain on the ballot knowing that most of its provisions, including those provisions which are most likely to excite the interest and attention of the voters, are invalid.

Let a peremptory writ of mandate issue commanding respondents not to take any action, including the expenditure of public funds, to place the proposed Balanced Budget Initiative on the November 6, 1984, General Election ballot. We reserve jurisdiction for the purpose of considering petitioners' request for an award of attorney's fees.

Bird, C. J., Mosk, J., Reynoso, J., and Grodin, J., concurred.

KAUS, J.

I agree with the majority that under article V of the United States Constitution as interpreted in the applicable federal precedents the initiative process cannot be used directly to apply for a call of a constitutional convention or indirectly to mandate the California Legislature to so apply. Because the governing federal law so clearly eviscerates the heart of the proposed initiative, I also agree that it is appropriate to remove the matter from the ballot at this time, before additional effort and expense are incurred on an inevitably futile task. I do not believe, however, that it is necessary to determine whether a small portion of the measure - by which the electorate purports simply to urge Congress to propose a balanced budget amendment - would, *standing alone*, be a proper initiative measure under *717 the California Constitution. Although I am not ready to say that it would not be, it would surely be permitting the tail to wag the dog to find that the possible validity of this minor part of the measure justifies the submission of a largely invalid initiative to the electorate. (See *People's Lobby, Inc. v. Board of Supervisors* (1973) 30 Cal.App.3d 869, 874 [106 Cal.Rptr. 666],disapproved on another point in *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038]; *Alexander* v. *Mitchell* (1953) 119 Cal.App.2d 816, 830 [260 P.2d 261].) Accordingly, I concur in the judgment.

LUCAS, J.

I respectfully dissent. The majority, acting both precipitously and prematurely, has once again deprived the sovereign people of their precious initiative right. (See *Legislature v. Deukmejian* (1983) 34 Cal.3d 658 [194 Cal.Rptr. 781, 669 P.2d

17] [blocking vote on reapportionment initiative].) In my view, the majority errs in at least *three* separate respects, by (1) selecting this case for *preelection* review, contrary to the well-settled rule favoring the initial exercise of the people's franchise, (2) misinterpreting the federal constitutional provision (U. S. Const., art. V) pertaining to the calling of a constitutional convention "on application of" the state Legislatures, and (3) strictly and narrowly construing the scope of the people's reserved initiative power under California law, contrary to the rule in dozens of prior cases.

I. *Preelection Review*

The dissent of Justice Richardson in the foregoing reapportionment initiative case set forth the pertinent authorities which hold that, in the absence of a showing of "clear invalidity," we should not interfere with a scheduled election on an initiative measure but, instead, we should defer our review until *after* the people have had the opportunity to express their views. (*Legislature* v. *Deukmejian*, *supra*, 34 Cal.3d at p. 681 [dis. opn.]; see *Brosnahan v. Eu* (1982) 31 Cal.3d 1, 4 [186 Cal.Rptr. 30, 651 P.2d 274].) Even "grave doubts" regarding the validity of an initiative do not require preelection review. (*Gayle v. Hamm* (1972) 25 Cal.App.3d 250, 256 [101 Cal.Rptr. 628].)

Our recent preelection review of the 1983 reapportionment initiative was "the first time in 35 years this court has removed from the ballot a qualified initiative measure, thereby preventing the people of California from voting on a subject of great importance to them ...." (34 Cal.3d at p. 681 [dis. opn.].) Today's decision, filed *less than one year later*, reflects in my view a disturbing trend of this court to reach out and prematurely decide constitutional issues which might have been rendered entirely moot by the results *718 of the forthcoming election, and which in any event readily could be addressed *after* the election has been held.

What reason does the majority offer for breaching, once again, the traditional rule of judicial restraint? The majority asserts that "The present proceeding ... challenges the power of the people to adopt the proposed initiative," supposedly a "proper ground" for preelection review. (*Ante*, p. 696.) Surely, the mere "challenge" to an initiative is not enough to trigger such expedited, accelerated review, for such a challenge could be made in every case. Instead, we must first satisfy ourselves that the initiative is *clearly* invalid, i.e., clearly beyond the people's power to adopt. No such showing is made here.

As I will explain, the people indeed do have the power to direct the Legislature to apply to Congress for a constitutional convention. But even were grave doubts presented regarding the initiative's validity, there are good reasons for deferring our review until after the people have expressed their views and voted upon the measure. As real parties herein point out in one of their briefs, "Participation in the electoral process and ongoing public debate on this important issue will benefit the citizenry and their elected representatives. It will allow citizens to exercise their first amendment rights to express their opinions." The majority's ruling unfortunately terminates abruptly any widespread public debate by California citizens regarding a matter so crucial to their own, and their nation's, financial well being. Might not the Legislature, the Congress and the voters each have welcomed a public airing of this important issue?

In addition, I question the propriety or necessity of the "rush to judgment" exhibited in this case, resulting from the majority's attempt to file its decision before impending election deadlines. Most of the briefing in this case was completed only a few *days* prior to oral argument; we filed today's opinion only a few *days* after hearing that argument. How can this court, already swamped with hundreds of pending cases, expect to reach a reasoned determination of the complex issues presented herein under such adverse circumstances?

Finally, several well respected amici (former Attorney General Griffin Bell, former Senator Sam Ervin, and Professor John Noonan) have raised an additional argument against preelection (or indeed *any*) judicial review which strikes me as quite persuasive: A court, and especially a state court, should not pass upon the essentially *political* question regarding the validity of an application for a constitutional convention pursuant to article V of the federal Constitution. (See *Coleman v. Miller* (1939) 307 U.S. 433 [83 L.Ed. 1385, 59 S.Ct. 972, 122 A.L.R. 695] [plurality opn., declining review of *719 validity of state ratification of constitutional

amendment].) Instead, we should defer to *Congress*, the body alone entrusted by the federal Constitution with the responsibility to receive and review such applications. As I indicate in the following part of this opinion, it is quite likely that Congress would conclude that the application is constitutionally valid. What possible harm could result from our deferring to Congress regarding this *federal* question?

II. *Validity Under Federal Law - The Convention Clause.*

Article V of the federal Constitution in pertinent part provides that Congress "*on the application of the Legislatures* of two-thirds of the several States, shall call a convention for proposing amendments" to the Constitution. (Italics added.) Such proposed amendments "shall be valid ... when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof ...." Contrary to the majority herein, the challenged initiative measure is not in conflict with the foregoing constitutional provision. The initiative simply directs *the Legislature* to file the requisite application so that California may be counted as supporting the calling of a constitutional convention. Where is the "clear invalidity" under federal law in that procedure?

Thus, section one, subdivision (a), of the challenged initiative measure recites that "The People of the State of California hereby mandate that the California Legislature adopt the following resolution and submit the same to the Congress ...." The resolution which follows urges Congress to propose a balanced budget amendment to the federal Constitution and makes "application" to Congress for the calling of a constitutional convention to consider such an amendment. Assuming that, under *California* law, the initiative process may be used for this purpose (a subject I discuss in part III hereof), what basis exists for holding that the measure contravenes the *federal* constitutional requirements of article V? That article requires an "application" from the Legislature; the challenged measure is designed to provide such an application.

This is not a case where the voters are attempting to abrogate *prior* completed legislative action. (E.g., *Hawke* v. *Smith* (1920) 253 U.S. 221, 227-230 [64 L.Ed. 871, 875-876, 40 S.Ct. 495, 10 A.L.R. 1504]; *Barlotti v. Lyons* (1920) 182 Cal. 575, 578-584 [189 P. 282].) In both *Hawk* and *Barlotti*, the state Legislatures had *already ratified* the 18th Amendment ("prohibition") by joint resolution. Nevertheless, referendum petitions were thereafter circulated for the purpose of submitting the question to the voters for their approval or rejection. Both courts quite properly held that, under article V of the federal Constitution, the term "Legislature" refers *720 only to the official representative body or bodies of the various states, rather than to the legislative power itself, as exercised through the referendum. Accordingly, the filing of the joint legislative resolutions *exhausted the ratification process*. As stated in *Hawke*, ratification "is but the expression of the assent of the state to a proposed amendment." (P. 229 [64 L.Ed. at p. 876].) Because article V mandated that such assent be expressed by the "Legislature," the referendum process was deemed inapplicable and incapable of abrogating the *prior* expression of legislative will.

In the present case, in contrast to *Hawke* and *Barlotti*, no attempt is made to "undo" any prior, completed legislative act which already had triggered a federal constitutional process such as calling a convention or ratifying a proposed amendment. Instead, here the initiative process is being used to assure that such an act finally is undertaken by our Legislature. Article V does not purport to prohibit the use of the initiative process as one means of inducing a state legislature to act. Indeed, as the foregoing cases make clear, the sole concern of article V is that the request for a convention call take the form of an application by a state legislature. As previously discussed, that concern is satisfied here.

III. *Validity Under California Law - The Initiative Process*

Is an initiative measure which directs the state Legislature to apply for a constitutional convention "clearly invalid" under California law? Clearly not. Before confronting that issue, however, we should first review certain fundamental principles which control our disposition. First and foremost, "All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." (Cal. Const., art. II, § 1.) A corollary to this is that "the legislative power of this State is vested in the California Legislature ..., *but the*

people reserve to themselves the powers of initiative and referendum." (*Id.*,art. IV, § 1, italics added.) Finally, "The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them." (*Id.*,art. II, § 8, subd. (a).)

The majority would apply a narrow construction of the scope of the initiative power under the California Constitution. In the majority's view, directing the Legislature to apply for a constitutional convention involves neither a "statute" nor an "amendment" to the state Constitution. But use of such a narrow construction of the people's initiative right is directly contrary to the teachings of prior decisions of this court which require a *liberal* construction favoring the exercise of the initiative power. *721

Justice Tobriner set forth the applicable principles as follows: "The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. Drafted in light of the theory that *all power of government ultimately resides in the people*, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the *duty of the courts to jealously guard* this right of the people' (*Martin* v. *Smith* (1959) 176 Cal.App.2d 115, 117 [1 Cal.Rptr. 307]), the courts have described the initiative and referendum as articulating '*one of the most precious rights of our democratic process*' (*Mervynne* v. *Acker* [1961] 189 Cal.App.2d 558, 563 [11 Cal.Rptr. 340]). ' [I]t has long been our judicial policy to *apply a liberal construction* to this power wherever it is challenged in order that the right be not improperly annulled. *If doubts can reasonably be resolved in favor of the use* of this reserve power, courts will preserve it.' (*Mervynne v. Acker, supra*, 189 Cal.App.2d 558, 563-564;*Gayle* v. *Hamm, supra*, 25 Cal.App.3d 250, 258.)" (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038], italics added, fns. omitted.)

Since *Associated Home Builders*, we have often followed these admonitions regarding this constitutional right. (See, e.g., *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241 [186 Cal.Rptr. 30, 651 P.2d 274] [upholding the "Victims' Bill of Rights" initiative]; *Fair Political Practices Com.* v. *Superior Court* (1979) 25 Cal.3d 33, 41 [157 Cal.Rptr. 855, 599 P.2d 46] [upholding, in most respects, the Political Reform Act of 1974]; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 219-220, 248 [149 Cal.Rptr. 239, 583 P.2d 1281] [upholding the Jarvis-Gann property tax initiative]; see also *Legislature, supra*, 34 Cal.3d 658, 683 [dis. opn.].)

Under a liberal construction of the "precious" and reserved initiative power, the people clearly would have authority to direct their own representatives in the state Legislature to apply for a constitutional convention. Such an initiative measure reasonably could be deemed a proposal for the adoption of a "statute."

There is no fixed, immutable definition of the term "statute." The term could refer to any formal, written exercise of legislative power, whether or not codified and placed within the California codes. The Code of Civil Procedure defines "statute" as any "written law" other than a constitution. (§ 1897; see also former Cal. Const., art. IV, § 1 [initiative is the power to propose "laws"].) The people's written directive to the Legislature, mandating it to apply for a constitutional convention, certainly would qualify as *722 a written law, i.e., a statute. Under this interpretation, we do not need to reach the further issue troubling the majority, namely, whether a legislative resolution applying for a constitutional convention is a statute. The statute involved here is the one enacted *by the people*, directing the Legislature to submit that application.

For example, a recent initiative measure in part required the Legislature to adopt provisions implementing the right of crime victims to monetary restitution. (Prop. 8, adopted at the June 1982 Primary Election, now art. I, § 28, subd. (b).) Is not this procedural mandate from the people to the Legislature a "written law"? If so, then in what respects does the initiative measure before us fail to qualify as proposing such a law? Would it have made any difference if our measure had recited that its text would be formally incorporated into a new section of the Government Code? Surely such formalism cannot prevail over the people's right to be heard on matters of grave importance to them. Indeed, our prior cases

require us to resolve all doubts in favor of the exercise of the initiative power, especially where the subject matter of the measure is of public interest and concern. (See *Santa Barbara Sch. Dist. v. Superior Court* (1975) 13 Cal.3d 315, 330 [118 Cal.Rptr. 637, 530 P.2d 605] [state initiative measure declaring state policy on forced busing]; *Farley v. Healey* (1967) 67 Cal.2d 325, 328-329 [62 Cal.Rptr. 26, 431 P.2d 650] [local initiative measure adopting policy favoring immediate ceasefire and withdrawal from Vietnam].) As stated in the *Santa Barbara* case, "The people of California through the initiative process, have the power to declare state policy." (P. 330.) Surely, then, they have the power to direct the Legislature, as their representative, to declare such policy on their behalf.

We should bear in mind that, unlike the limited referendum power, the initiative is not confined by any state constitutional restrictions upon its scope or use. (See Cal. Const., art. II, §§ 8, 9; *Carlson* v. *Cory* (1983) 139 Cal.App.3d 724, 728 [189 Cal.Rptr. 185] [repeal of state inheritance and gift taxes].) As *Carlson* observes, "there is nothing in our state Constitution which prohibits the use of the statutory initiative to repeal tax laws." (P. 731.) Similarly, nothing in the state Constitution forbids use of the initiative to direct the Legislature to apply for a constitutional convention.

In a case upholding the validity of another statewide initiative measure (Prop. 13, adopted June 6, 1978, now Cal. Const., art. XIII A), we acknowledged that the initiative may be viewed as a "'*legislative battering ram*'" aimed at "'tear[ing] through the exasperating tangle of the traditional legislative procedure and strik[ing] directly toward the desired end.' [Citation.]" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d 208, 228.) Given the numerous rejected or abandoned *723 bills aimed at accomplishing the end sought by the initiative measure challenged in this case, the foregoing description seems unusually apt. As in *Amador Valley*, "Although we express neither approval nor disapproval of the [measure] from the standpoint of sound fiscal or social policy" (p. 229), we should uphold it in recognition of the constitutional principle that "All political power is inherent in the people." (Cal. Const., art. II, § 1.) Liberally construed, the initiative power applies here.

IV. *Severability*

Time constraints do not permit me to explore at length the validity of those additional provisions of the challenged initiative which impose financial sanctions upon the Legislature in the event of its noncompliance, and which requires the Secretary of State to act in lieu of the Legislature should it fail to adopt the resolution within 40 days of voter approval. Suffice it to say that these provisions are entirely severable from, and do not affect the validity of, the provision directing the Legislature to apply for a constitutional convention. (See *In re Blaney* (1947) 30 Cal.2d 643, 655 [184 P.2d 892].)

Indeed, each separate section of the initiative measure is made "severable" by the terms of the measure itself, and if any section or subdivision is held invalid, "the remainder of the initiative ... shall not be affected thereby." I see no reason why the initiative may not be given effect, at least to the extent it directs the Legislature to apply for a constitutional convention. The distinct and severable questions of proper sanctions or alternative procedures in the event of noncompliance may be decided another day.

For all the foregoing reasons, I would deny the peremptory writ of mandate.

On October 25, 1983, the judgment was modified to read as printed above. *724

Cal.
American Federation of Labor v. Eu
36 Cal.3d 687, 686 P.2d 609, 206 Cal.Rptr. 89

END OF DOCUMENT

Commission on State Mandates

Original List Date: 9/27/2001
Last Updated: 7/19/2006
Last Print Date: 02/15/2008
Claim Number: 02-TC-04
Issue: Crime Statistic Reports for Department of Justice

Mailing Information: Draft Staff Analysis

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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DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

March 7, 2008

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

Dear Ms. Higashi:

As requested in your letter of February 15, 2008, the Department of Finance (Finance) has reviewed the draft staff analysis of Claim Nos. 02-TC-04 and 02-TC-11, "Crime Statistic Reports for the Department of Justice."

As a result of our review, Finance concurs with the staff recommendation to partially approve the test claim.

Consistent with our prior comments, we agree with staff that the statutes requiring law enforcement agencies and district attorneys to report specified information to the Department of Justice impose a reimbursable state-mandated program. Additionally, we agree with staff's recommendation that subdivision (a) of Section 13730 of the Penal Code, as amended by Chapter 1230, Statutes of 1993, imposes a reimbursable state-mandated program as the prior statutory reference to an incident report had been suspended at the time this Chapter was enacted.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your February 15, 2008 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA CASTANEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-04 and CSM-02-TC-11

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

March 7, 2008
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Crime Statistics Reports for the Department of Justice
Test Claim Number: 02-TC-11

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On March 7, 2008, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

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Sacramento, CA 95841

On 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 March 7, 2008, at Sacramento, California.

Kelly Montelongo

Kelly Montelongo

RESPONSE TO DRAFT STAFF ANALYSIS

Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999; Senate Resolution 64, Chapter 147, 1982; California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000; and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000

Claim nos. 02-TC-04 and 02-TC-11

Crime Statistic Reports for the Department of Justice

INTRODUCTION:

Test claimant County of Sacramento, Sheriff's Department (hereinafter "County") submits the following in response to the Draft Staff Analysis issued by Commission staff on February 15, 2008. The majority of the Analysis is supported by the County. The Analysis, however, concludes that one part of the program is not reimbursable. As rebuttal, the County addresses the following issue:

Do the test claim statutes or alleged executive orders impose a reimbursable state-mandated program within the meaning of article XIII B, section 6?

Staff answers the above question in the negative concluding that, with regard to the annual Department of Justice (DOJ) report to the Governor, Penal Code section 13012, the test claimants failed to plead the statutes necessary to support the claim that that section is a reimbursable state-mandated program. Specifically, Staff states that test claimants failed to plead Penal Code section 13020 which works in tandem with section 13012 to create the mandate. Staff is correct in its analysis of the importance of section 13020. The section, however, was included as part of the original test claim.

The original test claims stated:

> Beginning in 1955, the Legislature, through enactments in the Penal Code, set forth requirements that the Department of Justice (DOJ) must prepare statistical reports for review. Pursuant to Penal Code §§13020 and 13021, local law enforcement were required to comply with the DOJ and begin collecting statistical crime data. Reports were then generated and submitted to the DOJ either monthly or annually depending on the nature of the information the report contained.. At that time, only a few reports were required. In the late 1970's and through to present time, these reports have increased in number and complexity. Now, at least 10 types of reports are due monthly and three more due annually reporting on various issues such as homicide, domestic violence, citizen complaints, and hate crimes.[1]

As acknowledged in the Staff's analysis[2], section 13020 was part of a pre-existing program. It is the expansion of that program which is the subject of the instant test claim. The statute was cited as an overarching requirement. It was not part of the addition of the test claim statutes addressing the various new reports. The section was specifically pleaded, as set forth above, in the opening paragraph of the test claim to set the stage for the statutory changes that created new requirements under the existing program.

Finally, the County requests, pursuant to Government Code section 17557 and 17557.1, that this test claim be considered as a candidate for a reasonable reimbursement methodology (RRM) as the repetitive nature of the task would lend itself to such an application.

CONCLUSION:

Based on the preceding arguments, the County urges the Commission to find that, in addition to those sections set forth as reimbursable in the Staff's analysis, the Annual DOJ report to the Governor is also part of this reimbursable state-mandated program under Article XIII B, section 6 of the California Constitution.

---

[1] Crime Statistic Reports for the Department of Justice, Original Test Claim at page 1. Emphasis added.

[2] Draft Staff Analysis at page 4.

CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and correct, except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Executed this 11 day of March, 2008, at Sacramento, California, by:

Daniel Metzler
Records Bureau Manager
Sheriff's Department
County of Sacramento

PROOF 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 is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On March 11, 2008, I served on behalf of the County of Sacramento:

RESPONSE TO DRAFT STAFF ANALYSIS

Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999; Senate Resolution 64, Chapter 147, 1982; California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000; and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000

Claim nos. 02-TC-04 and 02-TC-11

Crime Statistic Reports for the Department of Justice

by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list attached hereto, and by sealing and depositing said envelope in the Untied States mail at Sacramento, California, with postage thereon fully prepaid.

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 this 11 day of March, 2008, at Sacramento, California.

Declarant

EXHIBIT G

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

GRAY DAVIS, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

October 24, 2002

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

Dear Ms. Higashi:

As requested in your letter of September 27, 2002, the Department of Finance has reviewed the test claim submitted by the City of Newport Beach (claimant) asking the Commission to determine whether specified costs incurred under Chapter 483, Statutes of 2001 et al., (AB 469/Cohn), et. al., are reimbursable state mandated costs (Claim No. CSM-02-TC-04— Crime Statistical Reports for the Department of Justice). Commencing with Page 1, Part A, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- Submittal of monthly and/or annual reports to the Department of Justice on various criminal statistics as mandated by Sections 12025, 12031, 13012, 13014, 13023, and 13730 of the Penal Code.

We note that requirements identified in Chapter 1609, Statutes of 1984 (Section 13730 of the Penal Code) has previously been determined to be a State-mandated local program. This mandate was subsequently suspended pursuant to Government Code Section 17581, which provides that no local agency is required to implement a mandate for which funding has not been provided in the Budget Act. Chapter 483, Statutes of 2001, would add an additional requirement to the existing mandate. However, since the mandate is suspended, implementation would be at the option of local government. This interpretation is consistent with a decision adopted by the Commission on State Mandates on January 29, 1998, regarding earlier changes to the same code section: Therefore, it does not seem appropriate to include references to these chapters as a part of this claim.

As the result of our review, the remaining statutes identified may have resulted in a new higher level of service as a result of requiring local law enforcement agencies to keep statistical data on the frequency, types and nature of criminal offenses, in addition to requiring these agencies to submit this data to the Department of Justice. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

If you have any questions regarding this letter, please contact Marcia Caballin, Principal Program Budget Analyst, or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

Calvin Smith
Program Budget Manager

Attachment A

DECLARATION OF MARCIA CABALLIN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-04

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Chapter 483, Statutes of 2001, et. al., sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

October 24, 2002
at Sacramento, CA

Marcia Caballin
Marcia Caballin

PROOF OF SERVICE

Test Claim Name: Crime Statistical Reports for the Department of Justice
Test Claim Number: CSM-02-TC-04

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On October 24, 2002, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Mr. Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8
Department of Education
School Fiscal Services
Attention: Gerry Shelton
560 J Street, Suite 150
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

Department of Justice
Criminal Statistics Center
Attention: Director
Special Requests Unit
4949 Broadway, Room E-203
Sacramento, CA 95820

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd. #307
Sacramento, CA 95814

Department of Finance
Attention: Susan Geanacou
915 L Street, Suite 1190
Sacramento, CA 95814

Department of Finance
Attention: Keith Gmeinder
915 L Street, 8th Floor
Sacramento, CA 95814

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

County of San Bernardino
Officer of the Auditor/Controller-Recorder
Attention: Mark Cousineau
222 West Hospitality Lane
San Bernardino, CA 92415-0018

City of Newport Beach
Attention: Glen Everroad
3300 Newport Blvd. P.O. Box 1768
Newport Beach, CA 92659-1768

California Peace Officers Association
Attention: Executive Director
1455 Response Road, Suite 190
Sacramento, CA 95815

MAXIMUS
Attention: Juliana Gmur
4320 Auburn Blvd. Suite 2000
Sacramento, CA 95841

California State Association of Counties
Attention: Steve Keil
1100 K Street, Suite 101
Sacramento, CA 95814

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

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

MAXIMUS
Attention: Pam Stone
4320 Auburn Blvd. Suite 2000
Sacramento, CA 95841

County of Los Angeles
Auditor-Controller's Office
Attention: Leonard Kaye, Esq.
500 W. Temple Street, Room 603
Los Angeles, CA 90012

David Wellhouse & Associates, Inc.
Attention: David Wellhouse
9175 Kelfer Blvd. Suite 121
Sacramento, CA 95826

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 October 24, 2002 at Sacramento, California.

Paula Pimentel

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 324-5470
Facsimile: (916) 324-8835
E-Mail: Catherine.VanAken@doj.ca.gov

January 28, 2003

Paula Higashi, Executive Director
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Commission on State Mandates, Test Claim 02-TC-04
Crime Statistic Reports for the Department of Justice

Dear Ms. Higashi:

The Commission on State Mandates (Commission) requested comment from the Department Of Justice (DOJ) regarding a test claim filed by the City of Newport Beach (City) wherein the City demands reimbursement for costs associated with certain crime statistics that it provides to the DOJ. We offer the following information provided by the DOJ's Criminal Justice Statistics Center to assist the Commission in its review process.

HISTORICAL BACKGROUND

1. The Uniform Crime Reporting Program

The Uniform Crime Reporting (UCR) Program is a city, county and state law enforcement program. The Program provides a nationwide view of crime based on the submission of statistics by law enforcement agencies throughout the country. The crime data are submitted either to a state UCR Program or directly to the national UCR Program which is administered by the Federal Bureau of Investigation (FBI). The International Association of Chiefs of Police (IACP) envisioned the need for statistics on crime in the 1920's. The IACP's Committee on Uniform Crime Records is a voluntary national data collection effort begun in

1930.[1] Crime data are, for the most part, collected on a monthly basis by the UCR Program. The FBI provides report forms, tally sheets, and self-addressed envelopes to agencies who complete the forms and return them directly to the FBI. The information submitted to the UCR Program should be only a portion of the data a law enforcement agency tabulates for its own effective and efficient use.

California, like many other states, has developed a state UCR Program that has streamlined the collection of UCR data and guaranteed consistency and comparability in the data forwarded to the FBI. Further, over the years, the California Legislature has required that the DOJ collect additional crime statistics, beyond those required by the Program.

2. The 1955 Mandate

In 1955, the California Legislature passed laws requiring the state's participation in the UCR Program, and at the same time, authorizing and directing the DOJ to collect, maintain, and analyze criminal statistics beyond the scope of the UCR Program. (Pen. Code §§ 13010 and 13020.) Penal Code section 13010 imposed a duty on DOJ to collect from state and local entities, on forms developed by DOJ, data necessary for the work of the department.[2] Such forms might "*in addition to other items*, include items of information needed by federal bureau or departments engaged in the development of national and uniform criminal statistics." (Pen. Code § 13010(b).) Penal Code section 13010 also provided that DOJ was to (1) recommend the form and content of records to be maintained by the state and local entities; (2) instruct them in the installation, maintenance and use of such records; (3) process, tabulate, analyze and interpret the data collected; (4) supply data to the FBI and others engaged in the collection of national criminal statistics; (5) present to the Governor an annual report containing the criminal statistics of the preceding calendar year; and (6) present at such other times as the Attorney General may approve reports on special aspects of criminal statistics.

Since 1955, Penal Code section 13020, in turn, imposed a duty upon, *inter alia*, city marshals, chiefs of police, district attorneys, city attorneys, city prosecutors having criminal jurisdiction, probation officers and "every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

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[1] California law enforcement has been participating in the program for decades. All states, except Alaska are participants. Obviously, a national UCR Program, which provides invaluable information to federal, state and local law enforcement agencies and lawmakers would have no value without full participation of all stakeholders.

[2] The original statute referenced "the work of the bureau," meaning the Bureau of Criminal Statistics within the California Department of Justice.

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those time and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title."

Hence, since 1955, cities have had the obligation to provide the DOJ with criminal statistics required by the UCR Program, as well as, those needed for the annual report to the Governor and other reports on special aspects of criminal statistics.

SPECIFIC PROVISIONS INCLUDED IN THE CITY'S CLAIM

1. Penal Code Section 13012 - Annual Report to the Governor

Chapter 1340, Statutes of 1980

Chapter 1340, stats. of 1980 amended Penal Code § 13012 to add one new reporting requirement – certain information regarding citizens' complaints against law enforcement. A copy of the current reporting form that DOJ provides to local law enforcement (CJSC 724) is attached hereto as Exhibit A.[3]

Chapter 803, Statutes of 1995

Statistics relating to juvenile offenders are collected and reported by *county*[4] probation departments. The program requiring reports of juvenile offender information was cut in 1990, but

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[3] Except for those situations in which the local entity must submit its own crime report (created and maintained in its normal course of business), the DOJ supplies all crime statistic reporting forms to the local entities free of charge. Further, all DOJ forms may be submitted either electronically (on disk) or by hard copy, at the discretion of the local reporting entity. In fact, some of the local entities use cost-free DOJ-provided "front-end software" for their own internal data collection/maintenance system needs. All DOJ forms are developed, sent and processed at DOJ expense.

[4] The City of Newport Beach has not explained how it is responsible for costs associated with reporting accomplished by the Orange County Probation Department.

restored effective 1996 (Chapter 803 of Stats. of 1995). At that time, DOJ switched from a paper to an electronic reporting system.[5]

Chapter 468, Statutes of 2001

In 2001 (Chapter 468, stats. 2001, urgency legislation) the Legislature required county probation departments to provide additional information regarding juvenile offenders (e.g., number of direct filings, number of fitness hearings, etc.) in response to Proposition 21. The DOJ electronic reporting system was modified to add fields to capture the additional inform.

2. Section 13014 - Homicide Cases

Chapter 1338, Statutes of 1992

Penal Code section 13014, enacted in 1992, did not add any new requirements for reporting homicides. The demographic information described in subparagraph (b) of section 13014 was already included on the Supplementary Homicide Report provided to the local entities by the DOJ. Copies of the current Supplementary Homicide Report (with a revision date of 9/90) and a prior version (with a revision date of 7/11/75) are attached, collectively, as Exhibit B. These forms demonstrate that the same demographic information has been required since at least 1975, and that no additional information was required as a result of the addition of Penal Code section 13014. Further, it is noteworthy that Penal Code section 13014 did not cause any change in the general Uniform Crime Reporting Return A (an FBI form), as it relates to homicides. A current copy of the Return A form (with a revision date of 8/7/89) is attached hereto as Exhibit C.

3. Section 13023 - Hate Crimes

Chapter 1172, Statutes of 1989

Although hate crime legislation passed in 1989, because of a lack of funding, the DOJ did not begin collecting data until 1994. There is an annual reporting form (CJSC 5) that is sent to *county*[6] district attorneys. A copy of current CJSC 5 is attached hereto as Exhibit D. Local law enforcement agencies are also required to report on hate crimes monthly, by simply sending

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[5] In fact, a committee comprised of DOJ staff and representatives from probation departments participated in the development of the reporting forms. And there may be some data that is currently being collected solely at the request of the probation departments.

[6] The City of Newport Beach has not explained how it is responsible for costs associated with this reporting requirement that falls upon the district attorney, an Orange County officer.

copies of their own (regularly prepared and maintained) crime reports to DOJ. If the local law enforcement agency has nothing to report in a given month, it is required to so indicate. (See "Monthly Hate Crime Report" attached hereto as Exhibit E.)

Chapter 933, Statutes of 1998

AB 1999 (Chapter 933, Stats. 1998) added crimes motivated by the "gender" of the victim to the list of hate crimes. In turn, DOJ notified local law enforcement that hate crimes include those crimes in which the gender (male, female, trans-gender) of the victim is the motivating force behind the crime and that crime reports relating to such crimes must be forwarded to DOJ on a monthly basis like all other hate crimes.

Chapter 626, Statutes of 2000

AB 715 (Chapter 626, Stats. of 2000) added crimes motivated by the "national origin" of the victim to the list of hate crimes. In turn, DOJ notified local law enforcement that hate crimes include those crimes in which the national origin of the victim is the motivating force behind the crime and that crime reports relating to such crimes must be forwarded to DOJ on a monthly basis like all other hate crimes.

4. Penal Code Sections 12025(h)(1)/Concealable Weapon and 12031(m)(1)/Loaded Weapon

Chapter 571, Statutes 1999

Chapter 571 added a requirement that, beginning in 2000 and sunsetting in 2005, the *county*[7] district attorney file an annual report concerning each person charged with carrying a concealable weapon and/or loaded weapon. DOJ has developed a combined reporting form (CJSC 4). A copy of form CJSC 4 is attached hereto as Exhibit F.

5. Penal Code Section 13730 - Domestic Violence

Chapter 1609, Statutes of 1984

The DOJ reporting form related to incidents of domestic violence has not changed since its inception in 1986. Copies of the form CJSC 715 used in 1986 and the current version of the same form are attached hereto, collectively, as Exhibit G. Other requirements of Section 13730,

[7] Again, the City of Newport has not explained how it is responsible for costs associated with this reporting requirement that falls upon the district attorney, an Orange County officer.

as amended,[8] relate to local law enforcement's own internal documentation of domestic violence incidents and have nothing to do with DOJ reporting requirements.

6. Senate Resolution 64, Chapter 147, Statutes of 1982

Through this resolution, the Legislature requests, but does not mandate, local law enforcement "to make every attempt to modify their data gathering procedures and computer storage systems to provide information as to the number of victims of violent crimes who are 60 years of age or older." The same resolution requests that the DOJ solicit and collect such information from the local entities. DOJ has prepared a form for this purpose (CJSC 727). A copy of CJSC 727 is attached hereto as Exhibit H.

We hope that this information will assist the Commission in its review of the City's claim. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Catherine M. Van Aken

CATHERINE M. VAN AKEN
Supervising Deputy Attorney General

For BILL LOCKYER
Attorney General

Attachments

[8] I.e, Chapter 1230, Statutes 1993, Chapter 965, Statutes of 1995, and Chapter 483, Statutes of 2001. None of these amendments required alteration of the existing DOJ form or the development of a new form.

ILL LOCKYER
ttorney General

State of California
DEPARTMENT OF JUSTICE

ANNUAL REPORT OF CITIZENS' COMPLAINTS AGAINST PEACE OFFICERS

TYPE OF COMPLAINT	NUMBER REPORTED	NUMBER UNFOUNDED	NUMBER EXONERATED	NUMBER NOT SUSTAINED	NUMBER SUBTAINED
NON-CRIMINAL					
CRIMINAL (FELONY)					
CRIMINAL (MISDEMEANOR)					
TOTALS					

3ENCY NAME _____ YEAR OF REPORT 2001 NCIC NUMBER _____

REPARED BY _____

HONE NUMBER ( ) _____

NSTRUCTIONS

1. Definitions of citizen's complaints and the method of their calculation should be determined by each police agency under Penal Code Section 832.5, which requires police agencies to establish procedures to investigate such complaints and make written descriptions of the procedures used.

2. Citizens' complaint information should adhere strictly to those data elements named in Penal Code Section 13012 (d) and should be limited to the "total number of such complaints, the number alleging criminal conduct of either felony or misdemeanor, and the number sustained in each category."

3. The primary unit of count should be the actual event. An event is defined as an occurrence of alleged misbehavior which has unity of time, place, and behavior. In some circumstances where there are multiple alleged victims, consideration should be given to modifying the counting procedure to account for the number of victims.

4. Number Reported: Enter the number of complaints reported during the year in the "reported" column opposite the "type" of complaint which properly identifies it.

5. Number Unfounded: Enter the number of complaints unfounded during the year in the "unfounded" column opposite the "type" of complaint which properly identifies it. "Unfounded" means that the investigation clearly established that the allegation is not true.

6. Number Exonerated: Enter the number of complaints exonerated during the year in the "exonerated" column opposite the "type" of complaint which properly identifies it. "Exonerated" means that the investigation clearly established that the actions of the peace officer that formed the basis for the complaint are not violations of law or department policy.

7. Number Not Sustained: Enter the number of complaints not sustained during the year in the "not sustained" column opposite the "type" of complaint which properly identifies it. "Not Sustained" means that investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint.

8. Number Sustained: Enter the number of complaints sustained during the year in the "sustained" column opposite the "type" of complaint which properly identifies it. "Sustained" means that the investigation clearly established that the actions of the peace officer that formed the basis for the complaint are a violation of law or department policy.

9. If you have no reported, unfounded, exonerated or sustained complaints to report for the year, write the word "none" across the face of the report and return it to the Criminal Justice Statistics Center.

MAIL OR FAX COMPLETED FORM TO:
CRIMINAL JUSTICE STATISTICS CENTER
P.O. BOX 903427
SACRAMENTO, CA 94023-4270
FAX (916) 227-3561

CJSC 724 (Rev. 1/01)

Exhibit A

SUPPLEMENTARY HOMICIDE REPORT

Exhibit B

In view of the importance of the homicide classification in crime reporting, it is requested that the following supplementary report be filled in and transmitted with the monthly Return A to: Bureau of Criminal Statistics, P. O. Box 903427, Sacramento, CA 94203-4270.

1A. MURDER AND NON-NEGLIGENT MANSLAUGHTER

1. Number of willful killings without due process of law. (Column 2 of Return A.) Do not include suicides or attempts to murder. Attempts to murder should be scored as Aggravated Assault on the Return A. 1._____

2. Number of cases classified as justified or excusable, limited to killing of a person by a peace officer in the line of duty and the killing of a felon by a private citizen. (Column 3 of Return A.) 2._____

3. Actual offenses. (The difference between 1 and 2 above.) (Column 4 of Return A.) 3._____

1B. MANSLAUGHTER BY NEGLIGENCE

1. Number of killings of another person through gross negligence. (Do not list traffic deaths.) (Score deaths below in Columns 2 and 4 of Return A.) 1._____

(COMPLETE ALL SECTIONS BELOW) Indicate briefly below the circumstances of the case(s)

CASE NUMBER/ DATE OF INCIDENT	VICTIM and OFFENDER (If known) NAME	AGE	SEX	RACE/ ETHNICITY	VICTIM/ OFFENDER RELATIONSHIP	WEAPON (handgun, shotgun, rifle, knife, club, etc.)	CIRCUMSTANCES (victim shot by robber, gang or drug related, etc.) LOCATION OF HOMICIDE (street, victim's residence, bar, etc.)	CLEARED Yes or No
	V							
	O							
	V							
	O							
	V							
	O							
	V							
	O							

Month _____, 19 _____

SUPPLEMENTARY HOMICIDE REPORT (continued)

CASE NUMBER/ DATE OF INCIDENT	VICTIM and OFFENDER (If known)				VICTIM/ OFFENDER RELATIONSHIP	WEAPON (handgun, shotgun, rifle, knife, club, etc.)	CIRCUMSTANCES (victim shot by robber, gang or drug related, etc.) LOCATION OF HOMICIDE (street, victim's residence, bar, etc.)	CLEARED Yes or No
	NAME	AGE	SEX	RACE/ ETHNICITY				
	V							
	O							
	V							
	O							
	V							
	O							
	V							
	O							
	V							
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	O							
	V							
	O							
	V							
	O							

12-84 (Rev. 7-
Form Approved
Budget Bureau No. 43-R0002

SUPPLEMENTARY HOMICIDE REPORT

In view of the importance of the homicide classification in crime reporting, it is requested that the following supplementary report be filled in and transmitted with monthly Return A to: Uniform Crime Reports, Federal Bureau of Investigation, U. S. Department of Justice, Washington, D. C. 20535.

1a. Murder and Nonnegligent Manslaughter

List below specific information for all offenses shown in item 1a of the monthly Return A. In addition, list all justifiable killings of felons by a citizen or by a peace officer in the line of duty.

Situation*	Victim**			Offender**			Data Code	Weapon Used (Handgun, Rifle, Shotgun, Club, Poison, etc.)	Relationship of Victim to Offender (Husband, Wife, Son, Father, Acquaintance, Neighbor, Stranger, etc.)	Circumstances (Victim shot by robber, robbery victim shot robber, killed by patron during barroom brawl, etc.)
	Ages	Sex	Race	Ages	Sex	Race	Do Not Write In These Spaces			

* ** - See reverse side for explanation

Do Not Write Here	
	Initials
Recorded	
Edited	
Punched	
Verified	
Adjusted	

Month and Year | Agency Identifier | Prepared By | Title

Agency | State | Chief, Sheriff, Commissioner, Superintendent

FBI/DOJ

478

SUPPLEMENTARY HOMICIDE REPORT (Continued)

1b. Manslaughter by Negligence

Do not list traffic fatalities, accidental deaths, or death due to the negligence of the victim. List below all other negligent manslaughters, regardless of prosecutive action taken.

Data	Situation*	Victim ** Age	Victim ** Sex	Victim ** Race	Offender ** Age	Offender ** Sex	Offender ** Race	Data Code Do Not Write In These Spaces	Weapon Used (Handgun, Rifle, Shotgun Knife, etc.)	Relationship of Victim to Offender (Husband, Wife, Son, Father, Acquaintance, Neighbor, Stranger, etc.)	Circumstances (Victim shot in hunting accident, gunCleaning, children playing with gun, etc.)

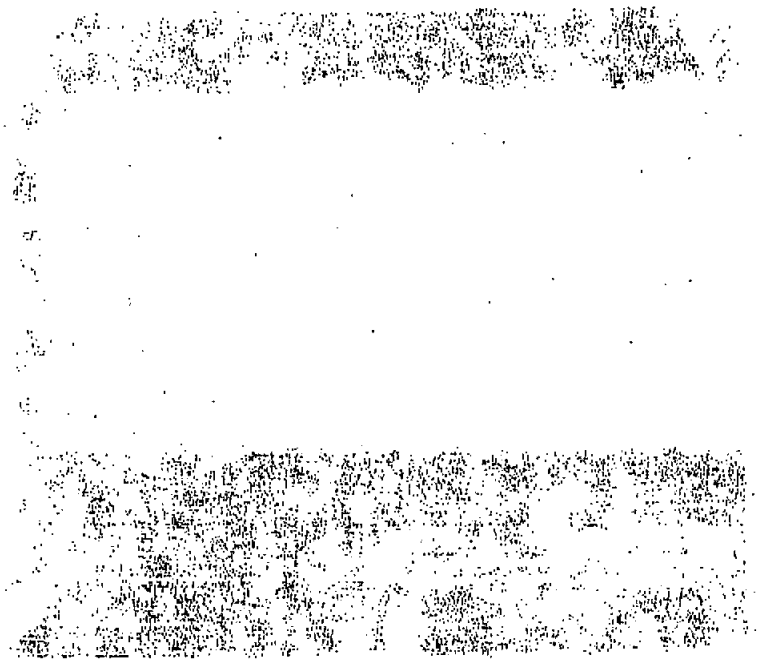
*- Situations A - Single Victim/Single Offender
B - Single Victim/Unknown Offender or Offenders
C - Single Victim/Multiple Offenders
D - Multiple Victims/Single Offender
E - Multiple Victims/Multiple Offenders
F - Multiple Victims/Unknown Offender or Offenders

Use only one victim/offender situation code per set of information. The utilization of a new code will signify the beginning of a new murder situation.

** Age - 01 to 99. If 100 or older use 99. New born up to one week old use NB. If over one week, but less than one year old use BB. Use two characters only in age columns.

Sex - M for Male and F for Female. Use one character only.

Race - White - W, Negro - N, American Indian - I, Chinese - C, Japanese - J, Other - O, Unknown - U. Use only these as race designat...



4-927 (Rev. 8-7-89)
Form Approved
OMB No. 1110-0001

ASSAULT OFFENSE ANALYSIS

1 CLASSIFICATION OF OFFENSES		2 OFFENSES REPORTED OR KNOWN TO POLICE (INCLUDE "UNFOUNDED" AND ATTEMPTS)	3 UNFOUNDED, I.E., FALSE OR BASELESS COMPLAINTS	4 NUMBER OF ACTUAL OFFENSES (COLUMN 2 MINUS COLUMN 3) (INCLUDE ATTEMPTS)	5 TOTAL OFFENSES CLEARED BY ARREST OR EXCEPTIONAL MEANS (INCLUDES COL. 6)	6 NUMBER OF CLEARANCES INVOLVING ONLY PERSONS UNDER 18 YEARS OF AGE
RIMINAL HOMICIDE* MURDER AND NONNEGLIGENT HOMICIDE (score attempts as aggravated assault) If homicide reported, submit Supplementary Homicide Report						
MANSLAUGHTER BY NEGLIGENCE						
ORCIBLE RAPE TOTAL						
Rape by Force						
Attempts to commit Forcible Rape						
OBBERY TOTAL						
Firearm	31					
Knife or Cutting Instrument	32					
Other Dangerous Weapon	33					
Strong-Arm (Hands, Fists, Feet, Etc.)	34					
ULT TOTAL						
Firearm	41					
Knife or Cutting Instrument	42					
Other Dangerous Weapon	43					
Hands, Fists, Feet, Etc. - Aggravated Injury	44					
Other Assaults - Simple, Not Aggravated	45					
URGLARY TOTAL						
[illegible]	51					
[illegible]try - No Force	52					
Attempted Forcible Entry	53					
ARCENY-THEFT TOTAL (except Motor Vehicle Theft)						
OTOR VEHICLE THEFT TOTAL						
Autos	24					
[illegible]ks and Buses	25					
[illegible]er Vehicles	26					
GRAND TOTAL						

ECKING ANY OF THE APPROPRIATE BLOCKS BELOW WILL ELIMINATE YOUR NEED TO SUBMIT REPORTS WHEN THE VALUES ARE ZERO. THIS L ALSO AID THE NATIONAL PROGRAM IN ITS QUALITY CONTROL EFFORTS.

☐ NO SUPPLEMENTARY HOMICIDE REPORT SUBMITTED SINCE NO MURDERS, JUSTIFIABLE HOMICIDES, OR MANSLAUGHTER BY NEGLIGENCE OCCURRED IN THIS JURISDICTION DURING THE MONTH.

☐ NO SUPPLEMENT TO RETURN A REPORT SINCE NO CRIME OFFENSES OR RECOVERY OF PROPERTY REPORTED DURING THE MONTH.

☐ NO LAW ENFORCEMENT OFFICERS KILLED OR ASSAULTED REPORT SINCE NONE OF THE OFFICERS WERE ASSAULTED OR KILLED DURING THE MONTH.

☐ NO AGE, SEX, AND RACE OF PERSONS ARRESTED UNDER 18 YEARS OF AGE REPORT SINCE NO ARRESTS OF PERSONS WITHIN THIS AGE GROUP.

☐ NO AGE, SEX, AND RACE OF PERSONS ARRESTED UNDER 18 YEARS OF AGE AND OVER REPORT SINCE NO ARRESTS OF PERSONS WITHIN THIS AGE GROUP.

☐ NO MONTHLY RETURN OF ARSON OFFENSES KNOWN TO LAW ENFORCEMENT REPORT SINCE NO ARSONS OCCURRED.

Month and Year of Report _____ NCIC Agency Number _____ Population _____

Date _____

Prepared By _____ Title _____

Agency and State _____

Chief, Commissioner, Sheriff, or Superintendent _____

Exhibit C FRONT

INSTRUCTIONS FOR PREPARING RETURN A

(Instructions in detail are given in the Uniform Crime Reporting Handbook)

1. All offenses listed on the Return A which occur during the month should be scored whether they become known to the police as the result of:
   a. Citizens' complaints
   b. Reports of police officers.
   c. "On view" (pick-up) arrests.
   d. Citizens' complaints to sheriff, prosecutor, county police, private detectives, constables, etc.
   e. Any other means.

2. The offenses listed in Column 1 are the Crime Index offenses of the Uniform Crime Reporting Program plus the offenses of simple assault and manslaughter by negligence. Follow the instructions for classifying and scoring as presented in the Uniform Crime Reporting Handbook. Offenses committed by juveniles should be classified in the same manner as those committed by adults even though the juveniles may be handled by juvenile authorities.

3. Adjustments should be made on this month's return for offenses omitted or scored inaccurately on returns of preceding months or those now determined to be unfounded. Offenses that occurred in a previous month but only became known to you this month should be scored this month.

4. Consider all spaces for each classification of offenses in Columns 2, 3, 4, 5, and 6. The breakdowns for forcible rape, robbery, assault, burglary, and motor vehicle theft, when added should equal the total for each of these offenses. Do not enter zeroes where no count exists.

5. Attempts of rape, robbery, assault, burglary, larceny-theft, and motor vehicle theft are to be scored on this form.

6. Column 2: Enter opposite the proper offense classification the total number of such offenses reported or known through any means. "Unfounded" complaints are included. Attempts are included except in homicide classifications.

7. Column 3: Enter the number of complaints which were proven to be "unfounded" by police investigation. An "unfounded" offense is one on which a complaint was received, but upon investigation, proves either to be baseless or not to have actually occurred. Remember that recovery of property or clearance of an offense does not unfound a complaint.

8. Column 4: Number of actual offenses. This number is obtained by subtracting the number in Column 3 from that in Column 2.

9. Column 5: Enter the total number of offenses cleared during the month. This total includes the clearances which you record in Column 6. An offense is cleared when one or more persons are charged and turned over for prosecution for that offense. Clearance totals also include exceptional clearances which are explained in the Uniform Crime Reporting Handbook.

10. Column 6: Enter here the number of offenses which are cleared through the arrest, releasing to parents, or other handling of persons under the age of 18. In those situations where an offense is cleared through the involvement of both an adult and a person under 18 years of age, count the clearance only in Column 5.

11. The grand totals for columns 2, 3, 4, 5, and 6 are the totals of each of the seven classifications.

12. Tally books can be used to maintain a running count of offenses through the month. Totals for the Return A can then be taken directly from the Tally book. These Tally books can be obtained by corresponding with the Uniform Crime Reports.

13. This Return A report should be forwarded to the FBI Uniform Crime Reports even though no offenses of this type listed were committed during the month. However, it is not necessary to submit supplemental reports in such cases. Simply check the appropriate box within the block near the bottom of the Return A report.

14. Any inquiry regarding the completion of this form or the classification and scoring of offenses in Uniform Crime Reporting should be directed to the Uniform Crime Reports, Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C. 20535 or can be made by attaching a note with a return address, to this form.

15. Any contributing police agency that desires to submit crime data on a computer printout should contact the Uniform Crime Reporting Section by mail at the above-mentioned address or by telephone 202-324-2614 prior to beginning this type of submission.

Return I Back

DISTRICT ATTORNEY AND ELECTED CITY ATTORNEY ANNUAL REPORT OF HATE CRIME CASES

January through December 2002

(California Penal Code Sections 13020, 13023, and 13870)

California Penal Code section 13023 provides the statutory authority for the Attorney General to collect hate crime data from law enforcement agencies; it also defines a hate crime as any criminal act or attempted criminal act to cause physical injury, emotional suffering or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, gender, sexual orientation, national origin or physical or mental disability.

There were **no hate crime cases** referred to or initiated by the district or elected city attorney's office during 2002 *(check box if no hate crime cases referred).* ☐

Number of hate crime cases (not the number of defendants) for each of the following:

Note: *District Attorney and Elected City Attorney counts should include all cases regardless of juvenile or adult status.*

I. The total number of hate crime cases that were referred to or initiated by your office. _____

Report all hate crime cases in which one or more defendants have been identified.

II. The total number of hate crime cases referred to or initiated which were rejected for filing. _____

III. The total number of cases referred to or initiated as hate crimes which were charged as other than a hate crime case. _____

IV. The total number of cases that were filed or initiated as hate crimes. _____

A. The total number of hate crime cases which resulted in hate crime convictions. Of those, how many were:

1. "Nolo contendere" or "Guilty pleas" _____
2. "Trial Verdicts" _____

B. The total number of hate crime cases which resulted in a non-bias-motivated crime conviction. _____

C. The total number of hate crime cases which resulted in a finding of "Not Convicted." _____

DISTRICT/ELECTED CITY ATTORNEY	CITY/COUNTY
NAME OF PERSON PREPARING REPORT	TELEPHONE NUMBER ( ) —

DISTRICT/ELECTED CITY ATTORNEY SIGNATURE _____ DATE _____

Exhibit D

Monthly Hate Crime Report

Agency: _____

NCIC Number: _____

Reporting Month: _____

There were no "Hate Crimes" reported to this department for this month.

_____ (____)_____

Signature and Title Phone

PLEASE RETURN TO:

State of California
Departent of Justice
Bureau of Criminal Information and Analysis
P. O. Box 903427
Sacramento, CA 94203-4270

Attn: Bias-Motivated Crime Program

Exhibit E

CONCEALABLE WEAPONS CHARGES REPORT

County _____ Month _____ Prepared by _____ Page _____

	REFERENCE NUMBER	DATE OF ARREST Mo / Day / Yr	RACE (Enter one code from legend)	GENDER M	GENDER F	DATE OF BIRTH Mo / Day / Yr	WEAPONS CHARGE	LEVEL F	LEVEL M	CHARGE 2 (if applicable)	CHARGE 3 (if applicable)	CHARGE 4 (if applicable)
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												
11												
12												
13												
14												
15												
16												
17												
18												
19												

MONTHLY REPORT OF DOMESTIC VIOLENCE-RELATED CALLS FOR ASSISTANCE

California Penal Code (PC) Section 13730(a)

Type of data		Number	
Total domestic violence calls received.....		100	1
Total cases in which weapons were involved..		50	2
SUBTOTAL	Firearm.....	5	3
	Knife or cutting instrument.....	5	4
	Other dangerous weapon.....	10	5
	Personal weapon (hands, fists, feet, etc.).	30	6

NAME OF AGENCY _____ AGENCY NCIC NUMBER _____

REPORT PERIOD (MONTH AND YEAR) _____ PREPARED BY _____

DEFINITIONS:

The following definitions are to be used when completing this form:

DOMESTIC VIOLENCE — "Abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or has or has had a dating or engagement relationship." (Section 13700(b) PC)

ABUSE — "Intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, or another." (Section 13700(a) PC)

INSTRUCTIONS FOR COMPLETION:

1. Enter the total number of domestic violence-related calls received by your agency in the "Total domestic violence calls received" column. Of the "Total domestic violence calls received," enter the number of cases involving weapons in the "Total cases in which weapons were involved" column. Of the "Total cases in which weapons were involved," enter the subtotal for each weapon category.
2. Please complete one form for each month and submit the form with your "Return A – Monthly Return of Offenses Known to the Police."
3. *If there are no calls received during the report period, write the word "NONE" across the face of this form and submit it with your "Return A."*

RETURN TO:
BUREAU OF CRIMINAL STATISTICS
P. O. BOX 903427
SACRAMENTO, CA 94203-4270

BCS 715 (4/86)

Exhibit G OLD DV

MONTHLY REPORT OF

DOMESTIC VIOLENCE-RELATED CALLS FOR ASSISTANCE

California Penal Code (PC) Section 13730(a)

Type of data		Number
Total domestic violence calls received and verified		
Total cases in which weapons were involved		
SUBTOTAL	Firearm	
	Knife or cutting instrument	
	Other dangerous weapon	
	Personal weapon (hands, fists, feet, etc.).	

NAME OF AGENCY

AGENCY NCIC NUMBER

REPORT PERIOD (MONTH AND YEAR)

PREPARED BY

INSTRUCTIONS FOR COMPLETION:

REPORT ONLY THOSE DOMESTIC VIOLENCE-RELATED CALLS FOR ASSISTANCE WHICH HAVE BEEN VERIFIED. SEE REVERSE SIDE OF THIS FORM FOR PENAL CODE STATUTES TO BE USED WHEN COMPLETING THIS FORM.

1. Enter the total number of domestic violence-related calls that are received and verified by your agency in the "Total domestic violence calls received and verified" column. Of the "Total domestic violence calls received and verified," enter the number of cases involving weapons in the "Total cases in which weapons were involved" column. Of the "Total cases in which weapons were involved," enter the subtotal for each weapon category.

2. Complete one form for each month and submit the form with your "Return A - Monthly Return of Offenses Known to the Police."

3. If there are no calls received during the report period, write the word "NONE" across the face of this form and submit it with your "Return A."

RETURN TO:

CRIMINAL JUSTICE STATISTICS CENTER
P. O. BOX 903427
SACRAMENTO, CA 94203-4270

CJSC 716 (Rev. 9/97)

DV Front

NUMBER OF VIOLENT CRIMES COMMITTED AGAINST SENIOR CITIZENS

IN ACCORDANCE WITH SENATE CONCURRENT RESOLUTION NO. 64 (CHAPTER 147, 1982), IT IS REQUESTED THAT LOCAL LAW ENFORCEMENT AGENCIES AND THE DEPARTMENT OF JUSTICE PROVIDE THE LEGISLATURE WITH STATISTICAL INFORMATION CONCERNING VICTIMS OF VIOLENT CRIMES WHO ARE 60 YEARS OF AGE OR OLDER.

Please complete one form for each month and submit it with your "Return A - Monthly Return of Offenses Known to the Police." Report the number of persons, 60 years of age or older, who were victims of any of the crimes shown below. When multiple crimes occurred during a single incident, show only the most serious for each victim according to the order of the following list.

TYPES OF VIOLENT CRIMES	NUMBER OF VICTIMS 60 YEARS OF AGE OR OLDER
1 HOMICIDE	
2 FORCIBLE RAPE	
3 ROBBERY	
4 AGGRAVATED ASSAULT	
5 TOTAL	

NAME OF AGENCY

AGENCY NCIC NUMBER

REPORT PERIOD (MONTH AND YEAR)

PREPARED BY

If you have no data to report for the month, please write the word "NONE" across the face of this form and submit it with your "Return A".

RETURN TO:
CRIMINAL JUSTICE STATISTICS CENTER
P.O. BOX 903427
SACRAMENTO, CA 94203-4270

CJSC 727 (Rev. 12/89)

Exhibit H

RESPONSE TO DEPARTMENT OF FINANCE AND DEPARTMENT OF JUSTICE

On Original Consolidated Test Claims
Chapter 1340, Statutes of 1980; Chapter 803, Statutes of 1995; Chapter 468, Statutes of 2001; Chapter 1338, Statutes of 1992; Chapter 1609, Statutes of 1984; Chapter 1230, Statutes of 1993; Chapter 965, Statutes of 1995; Chapter 483, Statutes of 2001; Chapter 1172, Statutes of 1989; Chapter 933, Statutes of 1998; Chapter 626, Statutes of 2000; Chapter 571, Statutes of 1999; Senate Resolution 64, Chapter 147, 1982; California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements, March 2000; and California Department of Justice, Criminal Justice Statistics Center, Criminal Statistics Reporting Requirements Spreadsheet, March 2000
Penal Code §§12025, 12031, 13012, 13014, 13023, 13730
Claim nos. CSM-02-TC-04 and CSM-02-TC-11

Crime Statistic Reports for the Department of Justice

The following are comments and responses to the letters of the Department of Finance, dated October 24, 2002, and the Department of Justice, dated January 28, 2003, regarding the original test claims as submitted by City of Newport Beach and the County of Sacramento.

A. Department of Finance's Comments

1. "We note that requirements identified in Chapter 1609, Statutes of 1984 (Section 13730 of the Penal Code) has previously been determined to be a State-mandated local program. This mandate was subsequently suspended pursuant to Government Code Section 17581, which provides that no local agency is required to implement a mandate for which funding has not been provided in the Budget Act. Chapter 483, Statutes of 2001, would add an additional requirement to the existing mandate. However, since the mandate is suspended, implementation would be at the option of local government. This interpretation is consistent with a decision adopted by the Commission on State Mandates on January 29, 1998, regarding earlier changes to the same code section. Therefore, it does not seem appropriate to include references to these chapters as part of this claim."

The rules of statutory construction hold that the Legislature, in enacting law, is deemed to have knowledge of its prior enactments (*Long Beach Unified School District v. The State of California* (1990) 225 Cal.App.3d 155.) and is also has knowledge of existing judicial decisions construing the same or related statutes (*Sutter Hospital of Sacramento v. Sacramento* 39 Cal.2d 33.). Thus the Department of Finance's position is well taken that in 1990 when Government Code §17581 was enacted, Penal Code §13730 was suspended, and the Legislature was aware of the Commission on State Mandate's decision finding a reimbursable mandate. The Legislature, however, passed bills in 1993, 1995 and 2001 which amended this suspended statute. Statutory construction holds that

in interpreting a statute, the court must give a reasonable and common sense interpretation which is consistent with the apparent purposed intention of the Legislature. (*In re Rochelle B.* (1996) 49 Cal.App.4th 1212; *Personal Watercraft Coalition v. Board of Supervisors* (2002) 100 Cal.App.4th 129.) In this case, the intent of the Legislature is clearly to revive the statute and bring it back to full force and effect recreating the mandate. Common sense dictates that amending a suspended act is fruitless. To apply the argument as championed by the Department of Finance would result in making the legislative acts of 1993, 1995, and 2001 meaningless and void. Again, statutory construction holds that courts must not construe a statute in a manner that renders its provisions essentially nugatory or ineffective and particularly so when that interpretation would frustrate the underlying legislative purpose. (*People v. Carter* (1996) 48 Cal.App.4th 1536.) In the instant case, the Legislature intended that its amendments to Penal Code §13730 would have full force and effect and would change crime statistics reporting. To hold otherwise, flies in the face of statutory construction and places the Legislature in the unsupportable position of creating law that is both contrary to its intent ineffectual.

Claimants cannot comment further on the holding of the Commission on State Mandates on January 29, 1998, as cited by the Department of Finance, as no claim number, pleading or transcript was provided to indicate the basis of the Commission's decision.

2. "As the result of our review, we have concluded that the statutes may have resulted in a new higher level of service as a result of requiring local law enforcement agencies to keep statistical data on the frequency, types and nature of criminal offences, in addition to requiring these agencies to submit this data to the Department of Justice. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program."

The Department of Finance has taken the position that a new state-mandated higher level of service may exist and thus is not in opposition to the position of the claimants.

B. Department of Justice Comments

The Department of Justice (DOJ) provided an extensive historical reference to the various code sections presented in this claim. As explained by the DOJ, the mandate to collect statistics first arose with regard to the Federal Bureau of Investigation in 1930. California mandated the collection and provision of information to the DOJ in 1955.

a. Chapter 1340, Statutes of 1980, amended Penal Code §13012 to add the requirement of reporting citizens' complaints against law enforcement.

b. Chapter 803, Statutes of 1995, reestablished a program for counties to report juvenile offenders statistics. This is now part of an electronic reporting system. The DOJ questions how the City of Newport Beach could claim costs from this county program.

c. Chapter 468, Statutes of 2001, requires county probation departments to provide information regarding juvenile offenders. This is also part of the electronic reporting system.

d. Chapter 1338, Statutes of 1992, requires demographic information on homicides. The DOJ maintains that this information was already required by the DOJ as part of its Supplementary Homicide Report which has been in use since at least 1975.

e. Chapter 1172, Statutes of 1989, requires county district attorneys to report annually and local law enforcement to report monthly on hate crimes. The DOJ notes that due to a lack of funding, it did not require the reports until 1994. The DOJ questions how the City of Newport Beach could claim costs from this county program.

f. Chapter 933, Statutes of 1998, added crimes motivated by gender to the list of reportable hate crimes.

g. Chapter 626, Statutes of 2000, added crimes motivated by national origin to the list of reportable hate crimes.

h. Chapter 571, Statutes of 1999, requires the county district attorney file an annual report on persons charged with carrying a concealable and/or loaded weapon. The DOJ questions how the City of Newport Beach could claim costs from this county program.

i. Chapter 1609, Statutes of 1984, requires information regarding domestic violence calls by local law enforcement. The DOJ states that its "reporting form related to incidents of domestic violence has not changed since its inception in 1986." Thus the information required to be reported pursuant to Chapter 1230, Statutes of 1993, Chapter 965, Statutes of 1995 and Chapter 483, Statutes of 2001 was already accounted for by the DOJ's reporting form of 1986.

j. Senate Resolution 64, Chapter 147, Statutes of 1982, is a request and not a requirement that local agencies and the DOJ collect data on violent crimes where the victim is 60 years or older.

The DOJ properly noted in several places that certain requirements are unique to counties and costs could not be claimed by the City of Newport Beach. Claimant City of Newport Beach was aware of that situation and has since been joined by Claimant County of Sacramento to properly balance this city/county test claim.

The DOJ explained that two of its reports, homicide and domestic violence, required the reporting of certain information prior to the Legislature making such reporting a mandate. Although the DOJ has the Legislative authority to request crime statistics, there is no state-mandate until the Legislature creates one. Thus the DOJ states that homicide reporting has not changed since before 1975 and domestic violence since 1986. This does not change the fact that this reporting was optional at the direction of the DOJ, who could have changed its reporting requirements at any time. Nor does it change the fact that such reporting is no longer option in light of the current statutes. Now, neither the local entities nor the DOJ itself can opt not to report that which is required by law. The simple fact that the DOJ has been conscientious about devising its crime statistic reports and has ultimately foreseen the direction of the Legislature, does not defeat the existence current state mandate and the constitutional guarantee for reimbursement of costs for local agencies.

Claimants find it interesting to note that although the Department of Finance is quite certain that there exists no mandate for the collection of information regarding domestic violence, the DOJ has been requiring such information without alteration since 1986. If the logic of the Department of Finance is to be believed, the DOJ has been oblivious to the fact that its program is strictly voluntary — quite a conundrum for the DOJ since it notes in its comments: "Obviously, a national UCR [Uniform Crime Reporting] Program, which provides invaluable information to federal, state and local law enforcement agencies and lawmakers would have no value without full participation of all stakeholders." Fortunately, as explained above, the precepts of statutory construction recreates the mandate and ensures the DOJ of the participation of its stakeholders.

CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 7 day of March, 2003, at Sacramento, California, by:

Althea M. Rivers

Althea Rivers
Records Bureau Manager
Sheriff's Department
County of Sacramento

CERTIFICATION

The foregoing facts are known to me personally 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 statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 10 day of March, 2003, at Newport Beach, California, by:

Glen Everroad
Revenue Manager
City of Newport Beach

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

Mr. Geoffrey L. Graybill, Esq.
Department of Justice
1300 I Street, Suite 125
Sacramento, CA 95814

Ms. Susan Geanacou, Esq.
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

Mr. Keith Gmeinder
Department of Finance
915 L Street, 6th Floor
Sacramento, CA 95814

Director, Department of Justice
Criminal Justice Statistics Center
4949 Broadway, Room E-203
Sacramento, CA 95820

Executive Director, California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

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

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

Ms. Annette Chinn
Cost Recovery Systems
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Folsom, CA 95630

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Mr. Steve Shields
Shield Consulting Group
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Mr. Keith Peterson
SixTen & Associates
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San Diego, CA 92117

Mr. Mark Sigman
Riverside County Sheriff's Office
4095 Lemon Street
Riverside, CA 92502

Ms. Althea Rivers
Sacramento Sheriff's Department
711 G Street, Room 405
Sacramento, CA 95814

Ms. Nancy Gust
Sacramento Sheriff's Department
711 G Street, Room 405
Sacramento, CA 95814

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92659