

**ITEM 9**  
**TEST CLAIM**  
**FINAL STAFF ANALYSIS**

Penal Code Sections 264.2, 13519 and 13701  
Statutes 1998, Chapters 698, 701 and 702

*Domestic Violence Arrests and Victim Assistance (98-TC-14)*

County of Los Angeles, Claimant

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**EXECUTIVE SUMMARY**

Penal Code section 264.2 requires law enforcement officers who investigate and assist victims of specified sex crimes to, among other things, give the victim a Victim of Domestic Violence card (victim card). The test claim statute (Stats. 1998, ch. 698) amends section 264.2 to add two crimes for which a victim card is given: victims of spousal battery, and victims of corporal injury on a spouse or other specified victim. Section 13519<sup>1</sup> requires the Commission on Peace Officer Standards and Training (POST) to implement a domestic violence training course and response guidelines with specified content. Section 13519 was amended (by Stats. 1998, ch. 701) to add subdivision (c)(5), “[t]he signs of domestic violence” to the course content and response guidelines.

Statutes 1998, chapter 702 amends section 13701, law enforcement’s domestic violence policy, to add: (1) transportation to a hospital and safe passage out of the victim’s residence, and (2) contact information for the California victims’ compensation program. It also adds two provisions to the content of the victim card: (1) phone numbers or county hotlines for local battered-women shelters, and (2) a statement that domestic violence or assault by a person known to the victim, including domestic violence or assault by the victim’s spouse, is a crime. This test claim statute also amends subdivision (b) of section 13701 by adding orders issued by other states, tribes or territories to the list of enforceable protective orders in the domestic violence arrest policy.

The Commission on State Mandates (Commission) has issued five decisions on prior versions of these test claim statutes within the past 17 years, as explained in the analysis.

For reasons stated in the analysis, staff finds that section 13701, subdivision (c)(9)(D) and (H) (as amended by Stats. 1998, ch. 702), and section 264.2, subdivision (a) (as amended by Stats. 1998, ch. 698), impose a reimbursable state-mandated program on local agencies within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

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<sup>1</sup> Statutory references are to the Penal Code unless otherwise indicated.

- Providing victim cards to victims of the following crimes: (1) Penal Code section 243, subdivision (e), battery against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship;<sup>2</sup> and (2) Penal Code section 273.5, willful infliction of corporal injury on a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.<sup>3</sup> (§ 264.2, subd. (a)).
- The one-time cost of printing victim cards to add the following new information: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).
- The one-time cost of adding to the domestic violence response policy two new crimes (§§ 243, subd. (e), & 273.5) to those for which a victim card is given out (§ 13701, subd. (c)(9)(H)).
- The one-time cost of adding the following to the description of the victim card in the domestic violence response policy: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).

Staff also finds that all other amendments to the test claim statutes, as discussed above, do not constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

### **Recommendation**

Staff recommends that the Commission partially approve this test claim and adopt this analysis.

<sup>2</sup> Penal Code section 243, subdivision (e).

<sup>3</sup> Penal Code section 273.5.

## STAFF ANALYSIS

### Claimant

County of Los Angeles

### Chronology

05/21/99 Claimant files test claim with the Commission

06/28/99 Department of Finance (DOF) files comments on test claim with the Commission

01/11/01 Claimant requests an extension to file a reply to DOF's comments until 30 days after the California Supreme Court's decision in *Carmel Valley Fire Protection District v. State of California* (2001) 25 Cal. 4th 287 (*Carmel Valley II*)<sup>4</sup>

01/16/01 Commission staff grants claimant's request for an extension

04/05/01 The California Supreme Court issues the *Carmel Valley II* decision

05/03/01 Claimant files response to DOF's comments

04/09/02 Commission staff, claimant, and DOF stipulate to stay proceedings until judicial determination of *County of Los Angeles v. Commission on State Mandates*

07/28/03 Decision issued in *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176

11/26/03 Commission staff issues draft staff analysis

12/22/03 Claimant files test claim amendment, accepted by Commission staff as timely filed.

10/15/04 Commission staff issues revised draft staff analysis

11/05/04 Claimant files comments on the revised draft staff analysis

11/19/04 Commission staff issues final staff analysis and Proposed Statement of Decision

### Background

#### A. Test Claim Legislation

In 1998, the Legislature enacted the test claim legislation to amend three Penal Code sections that address domestic violence. Section 264.2<sup>5</sup> requires law enforcement officers who investigate and assist victims of specified sex crimes to, among other things, give the victim a victim card. The test claim statute adds two crimes for which a victim card is given. The new groups to receive a card are victims of spousal battery, and victims of corporal injury on a spouse or other specified victim.

Section 13519<sup>6</sup> requires the Commission on Peace Officer Standards and Training (POST) to implement a domestic violence basic training course and response guidelines with content as

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<sup>4</sup> J. Tyler McCauley, County of Los Angeles, letter to Paula Higashi, January 11, 2001.

<sup>5</sup> Section 264.2 was amended by Statutes 1998, chapter 698 (see §§ 1.5 & 4 of ch. 698).

<sup>6</sup> Section 13519 was amended by Statutes 1998, chapter 701.

specified.<sup>7</sup> The test claim statute adds subdivision (c)(5), “[t]he signs of domestic violence” to the course content and response guidelines. Section 13519, subdivision (e), also requires supplementary training as prescribed and certified by POST. Subdivision (g) requires nonsupervisory officers who are “assigned to patrol duties and would normally respond to domestic violence calls”<sup>8</sup> to complete, every two years, an updated domestic violence course that includes the specified content of the response guidelines and basic training course.

Section 13701,<sup>9</sup> which contains the policies and standards for officers’ responses to domestic violence calls, was amended by Statutes 1998, chapter 702.<sup>10</sup> Chapter 702 amends the policies and standards for assisting domestic violence victims at the scene and the information given to the victim. Specifically, it adds to law enforcement’s domestic violence policy: (1) transportation to a hospital and safe passage out of the victim’s residence, and (2) contact information for the California victims’ compensation program. It also adds two provisions to the content of the victim card: (1) phone numbers or county hotlines for local battered-women shelters, and (2) a statement that domestic violence or assault by a person known to the victim, including domestic violence or assault by the victim’s spouse, is a crime. Further, the test claim statute amends subdivision (b) of section 13701 by adding orders issued by other states, tribes or territories to the list of enforceable protective orders in the domestic violence arrest policy.

## B. Prior Related Commission Decisions

The Commission has issued five decisions on prior versions of these test claim statutes within the past 17 years, as follows.

### **1. Penal Code section 13519 – Domestic Violence Training**

**Domestic Violence Training test claim:** In 1991, the Commission denied a test claim filed by the City of Pasadena requiring new and veteran peace officers to complete a course in how to handle domestic violence complaints as part of their basic training and continuing education courses (*Domestic Violence Training*, CSM-4376).<sup>11</sup> The Commission found that the test claim legislation: (1) does not require local agencies to implement a domestic violence training program and to pay the cost of the training; (2) does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours, so no additional costs are incurred by local agencies; and (3) does not require local agencies to provide domestic violence training.

**Domestic Violence Training and Incident Reporting test claim:** In 1998, the Commission decided the *Domestic Violence Training and Incident Reporting* test claim (96-362-01), finding that

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<sup>7</sup> See <[http://www.post.ca.gov/training/tps\\_bureau/domestic\\_violence/domestic-violence-manual\\_wv.pdf](http://www.post.ca.gov/training/tps_bureau/domestic_violence/domestic-violence-manual_wv.pdf)> (as of September 24, 2004); attached in Exhibit F.

<sup>8</sup> Penal Code section 13519, subdivision (g).

<sup>9</sup> Section 13701 was amended by Statutes 1998, chapter 702 (§§ 3.3 & 6, subd. (c)).

<sup>10</sup> Claimant originally pled Statutes 1998, chapters 698 and 701, but amended the test claim to add Statutes 1998, chapter 702.

<sup>11</sup> Penal Code section 13519, subdivisions (b) and (c) (Stats. 1984, ch. 1609).

Penal Code section 13519, subdivision (e)<sup>12</sup> (amended by Stats. 1995, ch. 965) is not a reimbursable state-mandated program. This statute requires local law enforcement officers below the rank of supervisor who normally respond to domestic violence calls to complete an updated domestic violence course every two years. The Commission found that because law enforcement officers are already required to take 24 hours of continuing education every two years, requiring the two-hour course as part of the 24-hour requirement does not impose increased costs mandated by the state.

The Commission's decision was upheld by the Second District Court of Appeal in *County of Los Angeles v. California Department of Finance*, holding that the statute did not impose a reimbursable state-mandated program because it merely "directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training."<sup>13</sup>

## 2. Penal Code section 13701 – Domestic Violence Response and Arrest Policies

**Domestic Violence test claim [response policies]:** In 1987, the Commission adopted the *Domestic Violence* Statement of Decision (CSM-4222), finding that the test claim statutes<sup>14</sup> are state-mandated programs that require local law enforcement agencies to: "develop, adopt and implement policies and standards for officer's responses to domestic violence calls; ... [maintain] records and recording systems, and ... [provide] specific written information ... to victims of domestic violence." The Commission's parameters and guidelines allowed reimbursement for, among other things: (1) development, adoption and implementation of a domestic violence policy; (2) preparing a statement of information for incidents of domestic violence and giving it to victims (not including the victim card<sup>15</sup>); and (3) reporting to the Attorney General. Furnishing the victim with written information when responding to domestic violence incidents is also reimbursable.

Except for the 2003-2004 fiscal year, however, the Legislature has suspended these activities (the *Domestic Violence* mandate, Stats. 1984, ch. 1609) every year since the current test claim statute's operative date (January 1, 1999) based on authority in Government Code section 17581.<sup>16</sup>

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<sup>12</sup> This is currently section 13519, subdivision (g) as amended by Statutes 1998, chapter 701.

<sup>13</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.

<sup>14</sup> Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 (Pen. Code, §§ 13700-13731).

<sup>15</sup> The victim card provision was added in 1991, which the Commission found reimbursable in the *Rape Victims Counseling Center Notice* test claim, CSM-4426 (1993), attached in Exhibit E.

<sup>16</sup> Except for the 2003-2004 budget (Stats. 2003, ch. 157), Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 have been suspended by the Legislature pursuant to Government Code section 17581 every year since the operative date of the current test claim statutes (January 1, 1999) as follows: Statutes 1998, chapter 282, Item 9210-295-001, Schedule (8), Provision 2; Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3. The Legislature did not suspend in 2003-2004, as of August 2, 2003, the date the 2003-2004 budget was enacted. It was suspended again in the 2004-2005 budget: Statutes 2004, chapter 208, Item 9210-295-0001, Schedule (3), Provision 5.

**Domestic Violence Arrest Policies and Standards test claim:** In 1997, the Commission adopted the *Domestic Violence Arrest Policies and Standards* Statement of Decision (96-362-02), finding that Penal Code section 13701, (as amended by Stats. 1995, ch. 246) constitutes a reimbursable state-mandated program for development, adoption, and implementation of domestic violence arrest procedures.<sup>17</sup> The Commission distinguished between the domestic violence *response* procedures in the suspended statute discussed above, and domestic violence *arrest* procedures in the amended test claim statute (now § 13701, subd. (b)), and concluded that the arrest procedures are not part of the legislative suspension of the response policy.

### **3. Penal Code section 264.2 – Victim Card Distribution**

**Rape Victims Counseling Center Notice test claim:** In 1993, the Commission adopted the *Rape Victims Counseling Center Notice* Statement of Decision (CSM-4426), finding that Statutes 1991, chapter 999 and Statutes 1992, chapter 224 (Pen. Code, § 264.2, subds. (b)(1) & (b)(2), & Pen. Code, § 13701) is a state-mandated program. The parameters and guidelines list the following reimbursable activities:

[R]equiring local law enforcement agencies to notify the local rape victim counseling center when the victim is transported to a hospital for examination and the victim approves of that notification; subject to the approval of the victim and upon request from the treating hospital, to verify whether the local rape victim counseling center has been notified; to revise the “Victims of Domestic Violence” card by adding information to assist rape victims, and to furnish a rape victim with a “Victims of Domestic Violence” card.

#### **Claimant’s Position**

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant requests reimbursement for the costs of providing victim cards to new groups of victims, giving additional written information to victims, giving victims additional emergency assistance, training officers, updating policies and procedures and modifying record-keeping systems.

Claimant amended the test claim in December 2003 to add Statutes 1998, chapter 702, but pled the same activities as in the original test claim. The Commission accepted the amendment as filed in a timely manner. Claimant concurred with the draft staff analysis, as noted below.

#### **State Agency Position**

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<sup>17</sup> This mandate (Stats. 1995, ch. 246) currently has \$1000 in the 2004-05 budget: Statutes 2004, chapter 208, Item 8120-102-0268, Schedule (1). The parameters and guidelines for this claim identify a uniform cost allowance as follows: A standard time of twenty-nine (29) minutes may be claimed to identify the primary aggressor in any domestic violence incident. The standard time of twenty-nine (29) minutes is broken down as follows: Seventeen (17) Minutes – Interview of both parties. Twelve (12) Minutes – Consideration of the factors listed [in the reimbursable activities]. The total cost will be determined by multiplying the number of reported responses x the average productive hourly rate, including applicable indirect costs as specified in section V., paragraph B, herein, x .48 (29 minutes divided by 60 minutes).

The Department of Finance (DOF) comments regarding Statutes 1998, chapter 698, that “these provisions would appear to result in a reimbursable state-mandated local program . . .” (Chapter 698 added two new groups of victims to those who receive a victim card). But DOF notes that the Legislature has suspended the mandates imposed by Statutes 1984, chapter 1609 relating to law enforcement responses to domestic violence, and argues that this includes the provisions of section 13701 requiring distribution of a victim card. According to DOF, “until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at issue in the present matter would similarly not be reimbursable.”

Regarding Statutes 1998, chapter 701, DOF states that requiring the domestic violence training course for law enforcement officers to include techniques for recognizing the signs of domestic violence would be satisfied by POST. As to the rest of chapter 701 (responding to domestic violence calls to include emergency assistance to the victim’s children, transportation of the domestic violence victim and children to a hospital for treatment if necessary, and police assistance in safe passage out of the victim’s residence), DOF believes “that these provisions may result in a reimbursable state-mandated local program.” However, based on the Legislature’s suspension of Statutes 1984, chapter 1609, DOF believes “any provision of Chapter 701/98 at issue . . . would not be reimbursable.”

No other state agencies commented on the test claim, nor on the amendment.

## Discussion

The courts have found that article XIII B, section 6 of the California Constitution<sup>18</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>19</sup> “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.”<sup>20</sup> 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.<sup>21</sup> In addition, the required activity or task

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<sup>18</sup> Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 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.

<sup>19</sup> *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

<sup>20</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>21</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup> A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”<sup>25</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>26</sup>

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.<sup>27</sup> 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.”<sup>28</sup>

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6?
- Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?
- Does the Commission have jurisdiction over activities decided in a prior test claim?

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<sup>22</sup> *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 Dist. v. Honig* (1988) 44 Cal.3d 830, 835 (*Lucia Mar*).

<sup>23</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874-875 (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).

<sup>24</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

<sup>25</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

<sup>26</sup> *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.

<sup>27</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

<sup>28</sup> *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.



- If the Commission finds a reimbursable state-mandate in the test claim statute(s), does article XIII B, section 6, subdivision (b)(5), apply to this test claim?

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

**A. Do the test claim statutes impose state-mandated activities on local agencies?**

**Domestic violence arrest policy (§ 13701, subd. (b)):** Statutes 1998, chapter 702 amended section 13701, subdivision (b),<sup>29</sup> by adding orders issued by other states, tribes or territories to the list of enforceable protective orders in the domestic violence arrest policy. The test claim statute amended the preexisting law as follows:

These [domestic violence arrest] policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of part 3 of Division 12, of the Family Code, or Section 136.2 of this code, or any other state, tribe, or territory, has been violated.

Local law enforcement agencies must now amend their domestic violence arrest policies to include these orders issued by other jurisdictions. Staff finds this amendment is not a state mandate because it is incidental to a requirement of federal law.

The legislative history of this amendment clearly indicates that it was enacted to bring California into compliance with the federal Violence Against Women Act (18 U.S.C. § 2265), which requires any protective order issued by a court of one state or Indian tribe to be accorded full faith and credit by the court of another state or Indian tribe and enforced as if it were the order of the enforcing state or Indian tribe.<sup>30</sup>

In *San Diego Unified School District v. Commission on State Mandates*,<sup>31</sup> the California Supreme Court considered whether the pupil expulsion hearing procedures of Education Code section 48918 are reimbursable. The court held that this Education Code provision was adopted to implement a federal due process mandate, so the hearing costs were not reimbursable.<sup>32</sup> In doing so, the court espoused the following rule.

[F]or purposes of ruling upon a request for reimbursement, challenged state rules or procedures [i.e., test claim statutes] that are intended to implement an applicable

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<sup>29</sup> This subdivision was added by Statutes 1995, chapter 246, which the Commission found is reimbursable in the *Domestic Violence Arrest Policies and Standards*, 96-362-02 (1996) test claim (in Exhibit E).

<sup>30</sup> Senate Judiciary Committee analysis, Assembly Bill No. 2177 (1997-1998 Reg. Sess.) as amended March 26, 1998, page 1 (in Exhibit F).

<sup>31</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

<sup>32</sup> *Id.* at page 888.

federal law -- and whose costs are, in context, de minimis -- should be treated as part and parcel of the underlying federal mandate.<sup>33</sup>

The reasoning of the *San Diego Unified* case applies to this claim because the amendment in the test claim statute was intended to implement a federal law (the Violence Against Women Act) and contains a de minimis, one-time cost (inserting a phrase in the domestic violence arrest policy).

Thus, staff finds that the amendment to section 13701, subdivision (b), in Statutes 1998, chapter 702 does not impose a state-mandated activity on local agencies because it is “part and parcel of the underlying federal mandate.”<sup>34</sup>

**Excluding the support person (Pen. Code, § 264.2, subd. (b)(4)):** Section 1.5 of Statutes 1998, chapter 698 adds subdivision (b)(4) to section 264.2 regarding sex-crime victims:

A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

Preexisting law gives the victim of specified sex crimes<sup>35</sup> the right to have a support person present during any medical evidentiary or physical examination.

Staff finds that subdivision (b)(4) does not impose a state-mandated activity on local agencies. The statute’s use of the word “may” makes this activity at the officer’s discretion.<sup>36</sup> Therefore, Penal Code section 264.2, subdivision (b)(4), is not subject to article XIII B, section 6.<sup>37</sup>

**Basic training (§ 13519, subd. (c)(5)):** Section 13519 requires POST to implement a course for training law enforcement officers in handling domestic violence complaints and developing guidelines for response to domestic violence. Section 1 of the test claim statute (Stats. 1998, ch. 701) amended subdivision (c)(5), to add “signs of domestic violence” to the list of basic training procedures and techniques.

In 1991, the Commission, in the *Domestic Violence Training* decision, CSM-4376 (1991), found that the basic training procedures and techniques of section 13519, subdivision (c), are not mandatory because the test claim legislation: (1) does not require local agencies to implement a domestic violence training program and to pay the cost of the training; (2) does not increase the minimum number of basic training hours, nor the minimum number of advanced officer training hours, so no

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<sup>33</sup> *Id.* at page 890.

<sup>34</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th at page 890.

<sup>35</sup> These include rape (§ 261) statutory rape (§ 261.5), spousal rape (§ 262), sodomy (§ 286), oral copulation (§ 288a), and forcible acts of sexual penetration (§ 289).

<sup>36</sup> *Kern High School Dist., supra*, 30 Cal.4th 727, 742; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

<sup>37</sup> Alternatively, because claimant pled no activities related to subdivision (b)(4), there is no evidence in the record that excluding the support person imposes costs mandated by the state.

additional costs are incurred by local agencies; and (3) does not require local agencies to provide domestic violence training.<sup>38</sup> The same analysis applies to this test claim.

Staff finds that the statutory amendment pled by claimant does not mandate basic training activities on local law enforcement agencies because the requirement to implement the domestic violence course is on POST, a state agency. Moreover, the requirement to complete the basic training course on domestic violence is mandated only on the individual seeking peace officer status.

Subdivision (c) of section 13519 states that “the course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the [domestic violence] procedures and techniques described below: . . .” The test claim statute does not mandate local agencies to provide the course of basic training, nor does it specify who is required to provide it.

In addition, there are no provisions in other statutes or regulations issued by POST that require local agencies to provide basic training to recruits. Since 1959, section 13510 and following have required POST to adopt rules establishing minimum standards relating to the physical, mental and moral fitness governing recruitment of new local law enforcement officers.<sup>39</sup> Recruits may obtain the required training at any institution approved by POST.<sup>40</sup> Moreover, “each *applicant* for admission to a basic course of training certified by [POST] who is *not* sponsored by a local or other law enforcement agency . . . shall be required to submit written certification from the Department of Justice . . . that the applicant has no criminal history background. . . .”<sup>41</sup>

Since 1971, section 832 has required “every person described in this chapter as a peace officer” to satisfactorily complete an introductory course of training prescribed by POST before they can exercise the powers of a peace officer.<sup>42</sup> Subdivision (e)(1) requires any person completing the basic training course “who does not become employed as a peace officer” within three years to pass the basic training examination. POST may charge a fee for the basic training examination to each “applicant” who is not sponsored or employed by a local law enforcement agency.<sup>43</sup>

Because the test claim statute does not mandate local agencies to incur costs to provide basic training, including the domestic violence course, staff finds that section 13519 (as amended by Stats. 1998, ch. 701), as it applies to basic training, does not impose a state-mandated activity on local agencies.

**Continuing training (§ 13519, subd. (c)(5)):** As discussed above, the test claim statute (Stats. 1998, ch. 701) amended subdivision (c)(5), to add “signs of domestic violence” to the list of basic training procedures and techniques. Subdivision (g), the continuing training provision,

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<sup>38</sup> This finding is consistent with the Commission’s decision in *Law Enforcement Racial and Cultural Diversity Training* 97-TC-06 (2000).

<sup>39</sup> These standards are found in Title 11 of the California Code of Regulations.

<sup>40</sup> Penal Code section 13511, subdivision (a).

<sup>41</sup> Penal Code section 13511.5.

<sup>42</sup> See also POST’s regulation, California Code of Regulations, title 11, section 1005, subdivision (a)(9).

<sup>43</sup> Penal Code section 832, subdivision (g).

requires specified peace officers to take the domestic violence course every two years “that is developed according to the standards and guidelines developed pursuant to subdivision (d).” Subdivision (d) states: “The guidelines developed by the commission [POST] shall also incorporate the foregoing factors.” These foregoing factors are listed in subdivision (c), the subdivision that was amended by the test claim statute to include the “signs of domestic violence” to the course content. Thus, the test claim amendment to subdivision (c) also affects continuing training.

The Commission found that the domestic violence continuing education requirement of section 13519 is not a reimbursable mandate in the *Domestic Violence Training and Incident Reporting* decision, 96-362-01 (1996). This test claim was litigated and the decision upheld by the court in *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176. But the court stated that POST certification for continuing education “is, for all practical purposes, not a ‘voluntary’ program and therefore the County must, in order to comply with section 13519, add domestic violence training to its curriculum.” (*Id.* at 1194).

For this reason, staff finds that the amendment to section 13519, subdivision (c)(5), as applied to continuing training, is mandated by the state. It is therefore further analyzed under Issue 2 below.

**Response policy, victim assistance & information (§ 13701, subd. (c)(7) & (c)(9)(D)):** The test claim statute added the following underlined provisions to section 13701’s domestic violence response policy:

- (subd. (c)(7)): Include standards for “Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim’s residence.”
- (subd. (c)(9)(D)): Include in written information given to the victim “A statement that, “For information about the California victims’ compensation program, you may contact 1-800-777-9229.””

Before the test claim statute, the domestic violence response policy was not required to include the underlined provisions above.

Therefore, adding these statements to the domestic violence response policy is required based on the plain language of section 13701, subdivision (a), which states: “Every law enforcement agency in this state **shall** develop, adopt, and implement written policies and standards for officers’ responses to domestic violence calls ... .”<sup>44</sup> [Emphasis added.]

The Legislature, however, has suspended the underlying requirement to develop, adopt, and implement policies and standards for officers’ responses to domestic violence calls. As discussed in the Background, the Commission approved the *Domestic Violence* test claim (CSM-4222) in 1987. As stated in the parameters and guidelines, local agencies are eligible for reimbursement for the following activities: (1) developing, adopting and implementing a Domestic Violence Policy; (2) preparing a statement of information for victims of incidents of domestic violence; (3) preparing a statement of information for victims of domestic violence; and (4) reporting to the Attorney General. The Commission also found that furnishing the victim with written information when responding to

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<sup>44</sup> This finding is consistent with the Commission’s decision in the *Domestic Violence* decision (CSM-4222), attached in Exhibit E.

domestic violence incidents, as well as report writing and other specified costs are reimbursable. Except for one year, the Legislature has suspended Statutes 1984, chapter 1609<sup>45</sup> in each budget act in fiscal years 1992-1993 through 2004-2005.<sup>46</sup> Although the budget acts do not mention Statutes 1985, chapter 668, (part of the *Domestic Violence* decision, CSM-4222), staff finds that the Legislature suspended it also. As specified in the State Controller's Office Claiming Instructions for CSM-4222, the entire domestic violence program as outlined in the parameters and guidelines was suspended.<sup>47</sup>

Thus, the issue here is what effect the suspension of *Domestic Violence* CSM-4222 (§ 13701, Stats. 1984, ch. 1609, Stats. 1985, ch. 668) has on the analysis of the test claim amendments to Penal Code section 13701.

DOF comments that the Legislature has suspended the mandates imposed by Statutes 1984, chapter 1609 relating to law enforcement responses to domestic violence. According to DOF, "until such time as the Legislature may opt to remove its suspension of this mandate, we believe any reimbursable provisions of Chapter 698/98 at issue in the present matter would similarly not be reimbursable."

Claimant disagrees, arguing that the suspension of Statutes 1984, chapter 1609 does not include the victim card provisions.<sup>48</sup> According to claimant, because chapter 1609's 'optional' requirements are different from the mandated requirements in the test claim legislation, chapter 1609 is not relevant as to whether the test claim is reimbursable.

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<sup>45</sup> Except for the 2003-2004 budget, Statutes 1984, chapter 1609 has been suspended by the Legislature since the operative date of the current test claim statutes (January 1, 1999), as follows: Statutes 1998, chapter 282, Item 9210-295-001, Schedule (8), Provision 2; Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2; Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3; Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3; and Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3.

<sup>46</sup> The Legislature did not suspend the mandate in 2003-2004. However, chapter 1609 was suspended again in the 2004-2005 budget act (Stats. 2004, ch. 208): Item 9210-295-0001, Schedule (3), Provision 5.

<sup>47</sup> State Controller's Office, County Mandated Cost Manual, Revised 9/94, page 1 (in Exhibit F).

<sup>48</sup> Claimant cited the victim card provisions of Penal Code section 13701, but the arguments also apply to the victim card provisions of Penal Code 264.2. It appears claimant's comments implicitly refer to the following prior Commission decisions: (1) *Domestic Violence*, CSM-4222 (1987) [Stats. 1984, ch. 1609 & Stats. 1985, ch. 668]; and (2) *Rape Victims Counseling Center Notice*, CSM-4426 (1993) [Stats. 1991, ch. 999 & Stats. 1992, ch. 224] (in Exhibit E).

For reasons stated below, staff finds that for years in which the Legislature suspends the mandate to develop, adopt, and implement a domestic violence response policy, adding the provisions in (c)(7) and (c)(9)(D) to the response policy is voluntary and not mandated by the state. But for years when the Legislature does not suspend the mandate to develop, adopt, and implement a domestic violence response policy, the activity of adding the provisions in (c)(7) and (c)(9)(D) to the response policy is mandated by the state.

Government Code section 17581, subdivision (a), governs mandate suspension. It makes complying with test claim statutes optional for local agencies on two conditions. First, the Commission (or the Legislature or any court) must find that the test claim statute, or any portion thereof, is a reimbursable state mandate. Second, the Legislature must specify in the budget that the test claim statute is not reimbursable for the fiscal year (by appropriating zero dollars for the program).

Government Code section 17581, subdivision (a), 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 for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

- (1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.
- (2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursement.

The activity required by the test claim statute to amend the original domestic violence response policy is included within the suspended program. The test claim statute requires adding transportation to “a hospital for treatment when necessary,” and “assistance in safe passage out of the victim’s residence” to the emergency assistance provision of the domestic violence response policy. It also requires adding victim’s compensation program contact information to the domestic violence response policy. The underlying suspended program encompasses these emergency assistance and victim information test claim amendments.

Since the underlying domestic violence response policy is voluntary in years that it is suspended by the Legislature, the local agencies’ obligation to amend the response policy is also voluntary in years the suspension is in effect. The California Supreme Court, in *Kern High School District*, found that “if a school district elects to participate in or continue participation in any *underlying voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda

requirements related to that program does not constitute a reimbursable state mandate.<sup>49</sup> The court further stated, on page 731 of the decision, that:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related program in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.]

The Commission is required to follow the holding of the California Supreme Court in interpreting state mandate issues.

Therefore, for fiscal years when the *Domestic Violence*, CSM-4222 (1987) program is suspended, staff finds that adding the emergency assistance and victim information to the domestic violence response policy, as required by Penal Code section 13701, subdivision (c)(7) and (c)(9)(D), is part of the suspended mandate, CSM-4222, and is optional. For fiscal years when the Legislature does not suspend the program, staff finds that adding the emergency assistance and victim information to the response policy is mandated by the state. Thus, the analysis continues under Issue 2 as to whether the activities in Penal Code section 13701, subdivision (c)(7) and (c)(9)(D), constitute a new program or higher level of service in years that the Legislature does not suspend the underlying domestic violence response policy program (CSM-4222).

**Response policy, victim card (§ 13701 subd. (c)(9)(H)):** The test claim statute requires local agencies to add the following to the victim card provision in the domestic violence response policy: “(i) The names and phone number of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837 ... [¶]...[¶] (iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.”

The victim card provision was not part of the suspended domestic violence response policy mandate because it was added to section 13701 in 1991, and was the subject of a prior test claim: *Rape Victims Counseling Center Notice* (CSM-4426) that was approved by the Commission. In it, the Commission found that revising the victim card, and furnishing it to victims, is reimbursable. The Commission's decision in *Rape Victims Counseling Center Notice* has not been suspended by the Legislature.

Therefore, staff finds that adding the following to the domestic violence response policy is mandated by the state: (1) phone numbers of or county hotlines for local battered women shelters and (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

**Providing the victim card (§ 264.2, subd. (a)):** Section 1.5 of Statutes 1998, chapter 698 amended subdivision (a) of section 264.2 to require law enforcement officers to give victims of specified sex crimes a Victim of Domestic Violence Card, or victim card. The test claim statute adds victims of

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<sup>49</sup> *Kern High School Dist.*, *supra*, 30 Cal.4th at page 743.

two crimes--alleged battery or corporal injury on a spouse or other specified victim--to the list of those for which a victim card is provided. Statutes 1998, chapter 698 amended section 264.2, subdivision (a) as follows (added text underlined):

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G)<sup>50</sup> of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

Penal Code section 243, subdivision (e), involves battery against “a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.” Penal Code section 273.5 involves willful infliction of corporal injury on a “spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.”

Staff finds that Penal Code section 264.2, subdivision (a), as amended by the test claim statute imposes a state-mandated activity on local agencies to provide two new groups of victims of specified crimes with a victim card.

**Summary:** On the issue of whether or not the test claim statutes impose a state-mandate activity on local agencies, staff finds the following.

- 13701 (d): DV arrest policy
- 264.2 (b)(4): Excluding the support person
- 13519 (c)(5): Basic training
- 13519 (c)(5): Continuing training
- 13701 (c)(7) & (c)(9)(D): response policy, victim assistance and information
- 13701 (c)(9)(H): Response policy, victim card
- 264.2 (a): Providing the victim card
- No. A de minimis activity intended to implement a federal law.
- No. A discretionary activity.
- No. Requirement is on POST and on person seeking peace officer status.
- Yes, for all practical purposes not voluntary. *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.
- Yes, adding statements to the response policy is mandatory in years in which the Legislature has not suspended the *Domestic Violence* mandate.
- Yes, amending the victim card provision in the response policy is mandatory.
- Yes, providing victim cards is mandatory.

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<sup>50</sup> The reference to subparagraph (G) of paragraph 9 of subdivision (c) of Penal Code section 13701 is in error, as (G) does not refer to the victim card. The correct reference to victim cards is subparagraph (H). Subparagraph (G) requires providing victims with a statement about the right to file civil suit for certain losses and expenses. This subparagraph predates the test claim statutes and is not analyzed herein.



## **B. Does the test claim legislation qualify as a program under article XIII B, section 6?**

For the remaining test claim statutes (§§ 13519, subd. (c)(5), & 13701, subd. (c), & 264.2, subd. (a), as amended by the test claim statutes) to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program,” defined 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 apply generally to all residents and entities in the state.<sup>51</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>52</sup>

The test claim statutes pertain to assisting and distributing information to domestic violence victims and domestic violence training for law enforcement. These activities are peculiarly governmental public safety functions administered by local law enforcement agencies as a service to the public. Moreover, the test claim legislation imposes unique requirements on local agencies that do not apply generally to all residents and entities of the state. Therefore, staff finds the test claim statutes constitute a “program” within the meaning of article XIII B, section 6.

### **Issue 2: Does the test claim legislation impose a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?**

To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.<sup>53</sup>

**Continuing training (§ 13519, subd. (c)(5)):** Staff found, under issue 1 above, that local agencies are required to include the “signs of domestic violence” in the course content for the domestic violence continuing education training course for “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.”

In the *Domestic Violence Training and Incident Reporting* Statement of Decision (96-362-01), the Commission found that the domestic violence continuing education course required by Penal Code section 13519, subdivision (e)<sup>54</sup> (amended by Stats. 1995, ch. 965) is not a reimbursable state-mandated program. The Commission determined that because non-supervisory patrol officers are already required to take 24 hours of continuing training every two years,<sup>55</sup> requiring the two-hour

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<sup>51</sup> *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

<sup>52</sup> *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

<sup>53</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>54</sup> This is currently section 13519, subdivision (g) as amended by Statutes 1998, chapter 701.

<sup>55</sup> California Code of Regulations, title 11, section 1005, subdivision (d)(1).

domestic violence course<sup>56</sup> within the existing 24-hour requirement does not impose increased costs mandated by the state.

The California Court of Appeal upheld the Commission's decision in *County of Los Angeles v. Commission on State Mandates*.<sup>57</sup> Since the court's holding was based on the 1995 version of section 13519, the issue is whether the test claim amendment could alter that conclusion.

The *County of Los Angeles* court stated,

[L]ocal law enforcement agencies may choose from a menu of course offerings to fulfill the 24-hour requirement. ...Adding domestic violence training obviously may displace other courses from the menu, or require the adding of courses. ...However, merely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources ...by mandating the inclusion of domestic violence training. ...[T]he state is requiring certain courses to be placed within an already existing framework of training. This loss of "flexibility" does not... require the County to expend funds that previously had been expended on the POST program by the State.<sup>58</sup>

Thus, the court concluded that the statute did not mandate a higher level of service.<sup>59</sup>

In adding "the signs of domestic violence" to the domestic violence continuing training content, the amendment to section 13519 is not a higher level of service because it does not alter the factors upon which the court relied, nor does it increase the existing framework of training. Local law enforcement's requirement to take the two-hour domestic violence course, and to take 24-hours of training every two years, remain the same. The test claim statute does not increase the hourly requirement for continuing training. Therefore, staff finds that the test claim amendment to section 13519, subdivision (c)(5), as it relates to continuing training (amended by Stats. 1998, ch. 701) does not constitute a new program or higher level of service.

**Response policy, victim assistance (§ 13701 subd. (c)(7)):** Statutes 1998, chapter 702 amended section 13701, subdivision (c)(7), to add the one-time activity of amending law enforcement's policies and standards for officers' responses to domestic violence calls. Specifically, chapter 702 added to the policy, "transportation to a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence."<sup>60</sup> Although this activity is currently voluntary because it is part of the legislatively suspended program, as discussed above, further analysis is necessary for years when the underlying program is not suspended.

Preexisting law did not require law enforcement's domestic violence response policy to include "transportation to a hospital for treatment when necessary," and "assistance in safe passage out of the victim's residence." Therefore, staff finds that adding these provisions to the domestic violence

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<sup>56</sup> California Code of Regulations, title 11, section 1081, subdivision (a)(25).

<sup>57</sup> *County of Los Angeles v. Commission State Mandates*, *supra*, 110 Cal. App. 4th 1176.

<sup>58</sup> *Id.* at page 1194.

<sup>59</sup> *Id.* at page 1193.

<sup>60</sup> Penal Code section 13701, subdivision (c)(7).

response policy is a new program or higher level of service only in years when the Legislature does not suspend the underlying domestic violence response policy program (CSM 4222).

**Response policy, victim information (§ 13701 subd. (c)(9)(D)):** The test claim statute (Stats. 1998, ch. 702, § 3.3) amended the domestic violence response policy by requiring local agencies to include in the response policy the following:

- Include in written information given to the victim “A statement that, “For information about the California victims’ compensation program, you may contact 1-800-777-9229.”

Although this activity is currently voluntary because it is part of the legislatively suspended program, as discussed above, further analysis is necessary for years when the underlying program is not suspended.

Preexisting law required the policy to include giving victims other assorted information, including information about shelters, community services, restraint of the alleged perpetrator, and legal information. Under prior law, however, the policy was not required to include giving the victim information about the California victims’ compensation program.

Therefore, staff finds that the one-time activity of inserting this contact information for the victims’ compensation program, as specified in the test claim statute, into the domestic violence response policy, is a new program or higher level of service only in years when the Legislature does not suspend the underlying program.

**Response policy, victim card (§ 13701 subd. (c)(9)(H)):** The test claim statute amended subdivision (c)(9)(H) of section 13701, which contains the policy’s description of the victim card’s contents. It was amended to add information to the card, as follows:

- (i) The names and phone number of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837 ... [¶]...[¶]
- (iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.”

Preexisting law required the victim card to include the following specified information:

- (i) The names and locations of rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.
- (ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.
- (iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

Prior law did not require the domestic violence response policy’s description of the victim card to include information about battered women shelters or a statement regarding the criminality of domestic violence or assault by a spouse. Since the test claim statute altered the victim card to add this information, new printing would be required.

Therefore, staff finds that the one-time activities of inserting information about battered women shelters and a statement regarding the criminality of domestic violence or assault by a person known to the victim or a spouse, as specified in the test claim statute, into the domestic violence response policy, and printing victim cards to include the new information, is a new program or higher level of service.<sup>61</sup>

**Providing the victim card (§ 264.2, subd. (a)):** Section 1.5 of Statutes 1998, chapter 698 amended subdivision (a) of section 264.2, which specifies the types of victims who must be provided with a victim card.

The test claim statute adds victims of two crimes--alleged battery or corporal injury on a spouse or other specified victim--to the list of those for which a victim card is provided. Statutes 1998, chapter 698 amended section 264.2, subdivision (a) as follows (added text underlined):

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G)<sup>62</sup> of paragraph (9) of subdivision (c) of Section 13701 of the Penal Code.

Penal Code section 243, subdivision (e), involves battery against “a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.” Penal Code section 273.5 involves willful infliction of corporal injury on a “spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.”

Prior law required law enforcement agencies to provide a victim card to victims of the following crimes: rape, sex with a minor, spousal rape, sodomy, oral copulation, and penetration by a foreign object. The amendment to section 264.2, subdivision (a), requires law enforcement to provide victim cards to victims of an alleged battery or corporal injury on a spouse or other specified victim. Because this amendment expands the universe of victim card recipients to include victims of two new crimes -- spousal battery and willful infliction of corporal injury -- staff finds that section 264.2, subdivision (a), as amended by Statutes 1998, chapter 698 constitutes a new program or higher level of service.

**Summary:** As to whether or not the test claim statutes are a new program or higher level of service subject to article XIII B, section 6, staff finds the following:

- 13519 (c)(5): Continuing training
- No, not a new program or higher level of service. *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1194.

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<sup>61</sup> Because the Legislature has not suspended the Commission’s *Rape Victims Counseling Center Notice* decision, CSM-4426 (1993), (in Exhibit E) suspension is not an issue for victim cards.

<sup>62</sup> As stated in footnote 50 above, the reference to subparagraph (G) of paragraph 9 of subdivision (c) of Penal Code section 13701 is in error, as (G) does not refer to the victim card. The correct reference to victim cards is subparagraph (H).

- 13701 (c)(7): Response policy, victim assistance
- 13701 (c)(9)(D): Response policy, victim information
- 13701 (c)(9)(H): Response policy, victim card
- 264.2 (a): Providing the victim card
- Yes, the one-time activity of adding statements to the response policy is a new program or higher level of service if the Legislature has not suspended the *Domestic Violence* mandate.
- Yes, the one-time activity of adding contact information to the response policy is a new program or higher level of service if the Legislature has not suspended the *Domestic Violence* mandate.
- Yes, the one-time activities of amending the victim card provision in the response policy and reprinting cards is a new program or higher level of service.
- Yes, giving out victim cards is a new program or higher level of service.

**Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?**

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose increased costs mandated by the state.<sup>63</sup> Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines “costs 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.

**Response policy, victim information (§ 13701, subs. (c)(7) & (c)(9)(D)):** As discussed above, for years in which “Statutes 1984, chapter 1609”<sup>64</sup> is not suspended in the budget act, the one-time activity of adding the following information to the domestic violence response policy is a mandated new program or higher level of service:

- Victim assistance provisions: “transportation to a hospital for treatment when necessary,” and “assistance in safe passage out of the victim’s residence.” (§ 13701, subd. (c)(7).)
- Victim notice: “A statement that, “For information about the California victims’ compensation program, you may contact 1-800-777-9229.” (§ 13701, subd. (c)(9)(D).)

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<sup>63</sup> *Kern High School Dist., supra*, 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835; Government Code section 17514.

<sup>64</sup> The suspended budget provision states “Statutes 1984, chapter 1609.” As discussed above, this refers to the Commission’s decision in the *Domestic Violence* test claim CSM-4222 (1991) (in Exhibit E).

Except for fiscal year 2003-2004, the underlying program has been suspended by the Legislature since the effective date of the test claim statute. According to a declaration provided by the claimant, the claimant incurred costs for this one-time activity between January 1, 1999, and June 30, 1999, when the suspension was in effect and the state did not mandate the activities.<sup>65</sup> Therefore, there is no evidence in the record that the activity of adding victim assistance information and information about the victims compensation program, as required by Penal Code section 13701, subdivisions (c)(7) & (c)(9)(D), to the domestic violence response policy resulted in “costs mandated by the state,” within the meaning of Government Code section 17514, to the claimant or any other local agency. Therefore, reimbursement is not required for Penal Code section 13701, subdivisions (c)(7) & (c)(9)(D).

**Response policy, victim card, and providing the victim card (§§ 13701, subd. (c)(9)(H), 264.2, subd. (a)):** As indicated above, staff finds the following activities constitute mandated new programs or higher levels of service:

- The one-time activities of amending the victim card provision of the domestic violence response policy to include information about battered women shelters and a statement regarding the criminality of domestic violence or assault by a spouse, and printing victim cards to include the new information, as specified in Penal Code section 13701, subdivision (c)(9)(H);
- Providing victim cards to victims of an alleged spousal battery and willful infliction of corporal injury, as required by Penal Code section 264.2, subdivision (a).

In the test claim, the claimant states that it would incur increased costs in excess of \$200 per annum,<sup>66</sup> which was the standard under Government Code section 17564, subdivision (a), at the time the claim was filed. For the costs of printing the new cards, claimant estimated costs of \$8,000.<sup>67</sup> There is no evidence in the record to dispute these costs.

Furthermore, none of the exceptions in Government Code section 17556 apply to this claim.

Therefore, staff finds there are costs mandated by the state within the meaning of Government Code sections 17514 for these activities.

#### **Issue 4: Does the Commission have jurisdiction over activities decided in a prior test claim?**

**Providing victim assistance & information (§ 13701, subd. (c)(7)):** Claimant requests reimbursement to implement portions of the domestic violence response policy. For example, the claimant requests reimbursement for transporting victims to a hospital for treatment and assisting victims out of the residence. Staff finds that the Commission already decided these “emergency

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<sup>65</sup> Declaration of Martha Zavala, May 7, 1999, page 4, Schedule A (in Exhibit A).

<sup>66</sup> The current standard is \$1000, amended by Statutes 2002, chapter 1124, effective September 30, 2002.

<sup>67</sup> Test Claim 98-TC-14, page 3.

assistance” activities in the *Domestic Violence* parameters and guidelines, CSM-4222 (1987), and therefore has no jurisdiction over this activity for purposes of this claim.<sup>68</sup>

The statutory scheme for mandate determinations under article XIII B, section 6 establishes finality for decisions adopted by the Commission. The Commission has no continuing jurisdiction over its decisions, including the *Domestic Violence* decision (CSM-4222). Until 1999, the Commission did not have any statutory authority to reconsider test claim decisions. In 1999, Government Code section 17559 was amended to authorize the Commission to order reconsideration, on petition of a party, within 30 days after the statement of decision is issued. (Stats. 1999, ch. 643.)

This finality also applies to parameters and guidelines. Once the parameters and guidelines are adopted, the State Controller’s Office has 60 days to issue claiming instructions to assist local agencies in claiming costs,<sup>69</sup> who then have 120 days from the date of the claiming instructions to file their reimbursement claims with the State Controller’s Office for initial fiscal year costs.<sup>70</sup>

Although the parties may request amendments to the parameters and guidelines, the request must be filed with the Commission before the deadline for initial claims to apply the proposed amendment retroactively back to all years eligible for reimbursement.<sup>71</sup> Requests to amend parameters and guidelines filed after the deadline for initial claims must be submitted on or before January 15 following a fiscal year in order to establish eligibility for that fiscal year.<sup>72</sup> Thus, Commission adopted amendments may apply to the prior fiscal year if filed before January 15 following a fiscal year. A request to amend the parameters and guidelines for *Domestic Violence* could not be retroactive to the initial reimbursement period of the original decision unless it were filed before the due date for the initial reimbursement claims.

The test claim statute in this case, Penal Code section 13701, subdivision (c)(7), added the following underlined provisions to section 13701’s domestic violence response policy:

Include standards for “Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim’s residence.”

In years when the underlying *Domestic Violence* program is not suspended, claimants are eligible to receive reimbursement for, among other things: ‘(1) development, adoption and implementation of a Domestic Violence Policy.’ The emergency assistance to victims, medical care, and transportation to a shelter were all included in the original test claim statute’s response policy. Penal Code section

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<sup>68</sup> The decision of the quasi-judicial administrative agency, if not challenged within the applicable statute of limitations, binds the parties on the issues litigated. *Hollywood Circle, Inc. v. Department of Alcoholic Beverage* (1961) 55 Cal.2d 728, 731-733.

<sup>69</sup> Government Code, section 17558, subdivision (b).

<sup>70</sup> Government Code, section 17561, subdivision (d)(1).

<sup>71</sup> Government Code, section 17557; California Code of Regulations, title 2, section 1183.2, subdivision (b).

<sup>72</sup> Government Code, section 17557; California Code of Regulations, title 2, section 1183.2, subdivision (c).

13701 originally included “[e]mergency assistance to victims, **such as** . . .” [Emphasis added.] The phrase, “such as” means, “for example” or “of a kind specified.”<sup>73</sup> Thus, the test claim statute in this case merely adds further examples of assistance after the “such as.” These amendments were called “clarifying” by the Assembly Public Safety Committee.<sup>74</sup> Since the amendments are clarifying only, they do not increase the level of service required of local agencies.<sup>75</sup>

Thus, because the activities of emergency assistance, medical care, and transportation were already decided in the original *Domestic Violence* statement of decision and parameters and guidelines, the Commission has no jurisdiction over these activities in this claim.

Claimant’s comments on the revised draft staff analysis state that claimant concurs with staff’s analysis, and concurs that the program “may, in 2005-06 and subsequent fiscal years, impose additional reimbursable costs in providing emergency assistance to domestic violence victims as noted . . . [in] staff’s analysis.” To clarify, staff does not find reimbursable costs for emergency assistance in future fiscal years. Rather, should the Legislature not suspend<sup>76</sup> the *Domestic Violence* mandate (CSM-4222), the activities in the parameters and guidelines, as mentioned on pages five and 13 of this analysis, and as listed in Exhibit E, would be reimbursable.

Claimant also requested reimbursement for assisting children out of the residence, but this activity is not in the enacted version of the test claim statute that amended section 13701 (Stats. 1998, ch. 702, §§ 3.3 & 6). The last chaptered bill is assigned the higher chapter number,<sup>77</sup> which becomes law when legislative bills are double or triple-joined, as they were in this case.<sup>78</sup> Neither chapters 698

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<sup>73</sup> See <<http://dictionary.reference.com/search?q=such%20as>> as of October 6, 2004.

<sup>74</sup> Assembly Public Safety Committee, Analysis of Assembly Bill No. 2172 (1997-98 Reg. Sess.) as introduced (in Exhibit F). Originally, the bill referred to “guaranteeing” safe passage away from the residence, but was later changed to “assisting.” This bill was later double joined to Assembly Bill No. 2177 (Stats. 1998, ch. 702), which was enacted as to section 13701.

<sup>75</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 877.

<sup>76</sup> Proposition 1A, enacted in November 2004, among other changes, adds subdivision (b) to article XIII B, section 6 of the California Constitution, as follows:

[F]or the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.

<sup>77</sup> See Government Code sections 9510 and 9605.

<sup>78</sup> Double-joined bills are two bills that propose to amend the same code section, drafted so that the amended bill does not override the provisions of the bill that affects the same section. In this case, section 6, subdivision (c) of Statutes 1998, chapter 702 states:

(c) Section 3.3 of this bill incorporates amendments to Section 13701 of the Penal Code proposed by this bill, AB 1201, and AB 2172. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) all three bills amend



nor 701, which include the provision regarding assisting children, amended or became law as to Penal Code section 13701.<sup>79</sup> So staff finds that the test claim statute does not mandate assisting children out of the residence.

**Issue 5 – If the Commission finds a reimbursable state mandate in the test claim statute(s), does article XIII B, section 6, subdivision (b)(5), apply to this test claim?**

On November 2, 2004, the voters enacted Proposition 1A, which among other changes, adds subdivision (b) to article XIII B, section 6. Subdivision (b) states in relevant part:

- (1) Except as provided in paragraph (2), for the 2005-06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to law, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by law.
- (2) Payable claims for costs incurred prior to the 2005-05 fiscal year that have not been paid prior to the 2005-06 fiscal year may be paid over a term of years, as prescribed by law. [¶] ... [¶].
- (4) This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.
- (5) This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment **and that constitutes a mandate subject to this section.** [Emphasis added.]

Subdivision (b)(5) excludes specified types of mandates from the operation of subdivision (b). The portions of this test claim that staff finds to be reimbursable mandates, as listed below, do not apply to the “employment status of any local government employee or retiree, or any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment.” Rather, they are merely new local government duties. Therefore, staff finds that subdivision (b)(5) does not apply to this test claim.

**Conclusion**

Therefore, staff finds that section 13701, subdivision (c)(9)(D) and (H) (as amended by Stats. 1998, ch. 702), and section 264.2, subdivision (a) (as amended by Stats. 1998, ch. 698), impose a

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Section 13701 of the Penal Code, and (3) this bill is enacted after AB 1201, [chapter 698] and AB 2172, [chapter 701] in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative. [Emphasis added.]

<sup>79</sup> Statutes 1998, chapter 698, sections 2.1, 2.3 and 5. Statutes 1998, chapter 701, sections 2, 2.1, 2.2, 2.3 & 3.

reimbursable state-mandated program on local agencies within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514.

Staff finds that the following activities are reimbursable.

- Providing victim cards to victims of the following crimes: (1) Penal Code section 243, subdivision (e), battery against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship;<sup>80</sup> and (2) Penal Code section 273.5, willful infliction of corporal injury on a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child.<sup>81</sup> (§ 264.2, subd. (a)).
- The one-time cost of printing victim cards to add the following new information: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).
- The one-time cost of adding to the domestic violence response policy two new crimes (§§ 243, subd. (e), & 273.5) to those for which a victim card is given out (§ 13701, subd. (c)(9)(H)).
- The one-time cost of adding the following to the description of the victim card in the domestic violence response policy: (1) phone numbers and/or local county hotlines of battered-women shelters; (2) a statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime. (§ 13701, subd. (c)(9)(H)(i) & (iv)).

Staff also finds that all other amendments to the test claim statutes, as discussed above, do not constitute a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.

### **Recommendation**

Staff recommends that the Commission partially approve this test claim and adopt this analysis.

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<sup>80</sup> Penal Code section 243, subdivision (e).

<sup>81</sup> Penal Code section 273.5.