

ITEM 10
PROPOSED AMENDMENT TO
PARAMETERS AND GUIDELINES
AND
STATEMENT OF DECISION

Penal Code Sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3), 13014, 13023, and
13730(a)

Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993,
Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571
(AB 491); and Statutes 2000, Chapter 626 (AB 715)

Crime Statistics Reports for the Department of Justice
and

Penal Code Section 13023

Statutes 2004, Chapter 700 (SB 1234)

Crime Statistics Reports for the Department of Justice Amended

12-PGA-01 (02-TC-04 and 02-TC-11 and 07-TC-10)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

Attached is the proposed statement of decision for this matter. This proposed statement of decision also functions as the final staff analysis, as required by section 1183.07 of the Commission's regulations.

I. Background

On October 1, 2012, the State Controller's Office (SCO) filed a request to amend the parameters and guidelines for *Crime Statistics Reports for the Department of Justice* to clarify the scope of the activity mandated by Penal Code section 13730(a), as amended by Statutes 1993, chapter 1230. The 1993 amendment to the statute added the underlined language in subdivision (a) as follows:

- (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.

On June 26, 2008, the Commission approved the test claim with respect to the 1993 amendments to Penal Code section 13730(a), authorizing reimbursement for the following activity: “For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report.”

On September 30, 2010, the Commission adopted parameters and guidelines, authorizing reimbursement for the activity, beginning July 1, 2001, as follows:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.

In its request to amend the parameters and guidelines, the SCO contends that for the period of July 1, 2001, through June 30, 2011, claimants have filed 2,605 claims totaling \$143 million in costs for the activities listed above, and have inappropriately claimed costs for writing *all* domestic violence incident reports in their claims for reimbursement. The SCO argues that some of the costs are not reimbursable under Penal Code section 13730(a), but should instead be included in other state-mandated programs that reimburse local government for costs incurred under Penal Code section 13730(c). The Commission authorized reimbursement for Penal Code section 13730(c), as amended by different statutes, in *Domestic Violence Information* (CSM 4222), *Domestic Violence Training and Incident Reporting* (CSM 96-362-01), and *Crime Victims’ Domestic Violence Incident Reports II* (CSM 02-TC-18), all of which have been suspended by the Legislature. The SCO believes that subdivision (c) of the statute should be interpreted as requiring the written incident report in all cases when it is determined that a domestic violence *crime* is committed, and that subdivision (a) should be interpreted as requiring the incident report in “all other cases” when it is determined that no crime was committed or that the crime committed was not a domestic violence incident. The SCO also contends that some claimants have inappropriately claimed costs under subdivision (a) for interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other ancillary activities. The SCO proposes that the parameters and guidelines be amended by adding the following underlined language:

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report, except for those that result in a written report of domestic violence. Such a circumstance could occur where officers are dispatched to the scene of a domestic violence-related call for assistance, but after investigation, determine that either no crime was committed, or that the crime committed was not a domestic violence incident. In such cases, the reimbursable costs to write the report include the costs to conduct the underlying investigation to the extent necessary to write the report.
However, this reimbursability does not extend to such ancillary tasks as completing the booking sheet or restraining order, transporting the victim(s) to the hospital, booking the alleged perpetrator, and other related activities.
2. Review and edit the report.

II. Procedural History

On October 1, 2012, the SCO filed a request to amend the parameters and guidelines for the *Crime Statistics Reports for the Department of Justice* program. On January 2, 2013, interested person, Mr. Allan Burdick, commented on the SCO's request to amend the parameters and guidelines, asserting that the amendment is unnecessary. No other comments have been filed.

The draft staff analysis, proposed statement of decision, and proposed amendments to the parameters and guidelines were issued for comment on October 11, 2013. No comments were received by local agencies. The SCO and Department of Finance (DOF) requested an extension of time to file comments. In addition, the SCO requested that the hearing on the matter be postponed. Those requests were granted. On November 27, 2013, DOF filed comments on the draft staff analysis and on December 2, 2013, the SCO filed comments on the draft staff analysis.

III. Analysis

The SCO raises two issues in its request. The first issue deals with the interpretation of Penal Code section 13730(a) and (c), and the Commission's decisions on those subdivisions. The second issue seeks clarification whether claimants are eligible for reimbursement for "interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities."

- A. The SCO's interpretation, that Penal Code section 13730(a) should be limited to situations where no crime is committed, or that the crime committed is not a domestic violence incident, is not supported by the law or the Commission's decisions and, thus, staff recommends that the Commission deny the request to amend the parameters and guidelines in this respect.**

The Commission approved reimbursement "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)," and this language was placed in the parameters and guidelines for the program with little discussion, except to add reasonably necessary activities to review and edit the report.

The SCO contends that reimbursement to support “all domestic-violence related calls for assistance with a written incident report” pursuant to Penal Code section 13730(a) should be limited to situations where a crime has not been committed, or the crime committed is not one of domestic violence. On the other hand, costs incurred to prepare a domestic violence incident report in cases where a domestic violence crime has been committed are covered by other state-mandated programs approving reimbursement for Penal Code section 13730(c), which have been suspended by the Legislature. In other words, SCO is suggesting that the language in subdivision (a) requiring a written incident reports for “*all* calls for assistance,” when compared to the existing language in subdivision (c) requiring a report for all “incidents” of domestic violence, imposes a limited, higher level of service on local agencies for writing only those reports on calls where no domestic violence crime is found.

Staff disagrees with SCO’s interpretation for the following reasons:

- SCO’s interpretation conflicts with the statements of decision on the test claim and parameters and guidelines, and ignores the Legislature’s suspension of the existing requirement in subdivision (c), making that requirement voluntary. At the time Penal Code section 13730(a) was enacted and became effective in 1993, subdivision (c) required that “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.” The Commission determined that the requirement in subdivision (c) constituted a state-mandated activity in an earlier test claim, *Domestic Violence Information* (CSM 4222). Following that determination, the Legislature suspended the mandate in subdivision (c) pursuant to Government Code section 17581. Pursuant to Government Code section 17581(a), “[n]o 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 [the mandated program is suspended.]” Section 17581(c) then provides that if a local agency elects to implement or give effect to a statute or executive order that is suspended, the local agency may assess fees to persons or entities which benefit from the statute or executive order. According to the California Supreme Court, once a statute or regulation previously determined to require reimbursement has been properly suspended by the Legislature, there is *no duty to comply* with the requirement in statute or regulation during the fiscal years of the suspension.¹

Thus, at the time the 1993 test claim statute was enacted, and by operation of Government Code section 17581 with respect to the mandated activity in Penal Code section 13730(c), there was no duty in law to write a domestic violence incident report for incidents of domestic violence. Thus, with the suspension making the activity in subdivision (c) voluntary, there was no prior requirement to write a report. The 1993 legislation adding the language in subdivision (a), therefore, imposed a new program or higher level of service, mandating the activity of supporting *all* domestic violence related calls for

¹ *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 309.

assistance with a written incident report.² This finding is reflected on page 17 of the statement of decision on the test claim as follows: “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.” The analysis adopted with the parameters and guidelines approve reimbursement, without limitation, to “support *all* domestic-violence related calls for assistance with a written incident report” due to the suspension of the existing requirement. The Commission’s decisions on the test claim and parameters and guidelines were not challenged, and remain final binding decisions.³

- Other Commission decisions addressing Penal Code section 13730 do not support SCO’s interpretation that section 13730(a) is limited to situations where a crime has not been committed, or the crime committed is not one of domestic violence, and that section 13730(c) requires a report only when a domestic violence crime has occurred. (*Domestic Violence Information* (CSM 4222); *Crime Victims Domestic Violence Incident Reports* (99-TC-08), and *Domestic Violence Incident Reports II* (02-TC-18).)
- The preexisting requirement in Penal Code section 13730(c), as added in 1984, that “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,” was interpreted by the Commission (in *Domestic Violence Information* (CSM 4222)) and by the Commission on Peace Officer Standards and Training (POST) to require a report in all cases when an officer responds to a domestic violence call, and not only in situations where law enforcement determines that a domestic violence crime has been committed as asserted by the SCO.

Accordingly, staff recommends that the Commission deny SCO’s request in this respect.

However, since two other Commission decisions directly affect the reimbursement for Penal Code section 13730, staff recommends the following clarifying language be added to the parameters and guidelines, consistent with these decisions:

In addition, reimbursement is *not* required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

² This finding is consistent with the court’s findings in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835, which looked at the law in existence at the time the test claim statute is enacted to determine if there is a new program or higher level of service.

³ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

B. Staff recommends that the Commission approve SCO’s request to amend the parameters and guidelines to clarify that reimbursement is *not* required for “interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator.”

The SCO states that local agencies are inappropriately claiming reimbursement for interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities to enforce a crime and assist the victim.

These activities are not eligible for reimbursement because they go beyond the scope of the mandate to write the incident report pursuant to 13730(a). Investigation, arrests, and treatment of victim are not required by the plain language of the test claim statute and were not found to be reimbursable in the Commission’s decisions on the test claim and parameters and guidelines. In addition, local law enforcement agencies have a preexisting duty to investigate crime.⁴

Moreover, how officers perform duties relating to investigations and arrests are governed by local policy. Penal Code section 13701 specifically requires each agency to develop and adopt written policies and standards for officers’ responses to domestic violence calls. The policies have to cover arrests, assistance to victims, cite and release policies, et cetera.

Thus, staff recommends that the Commission approve SCO’s request to amend the parameters and guidelines to clarify that reimbursement is not required to interview parties, complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

C. The proposed clarifying amendments would be effective for the entire period of reimbursement.

Because the additional language proposed simply clarifies the mandated activities and does not make a substantive change to the program, the clarification may be applied by the SCO in its review of reimbursement claims filed before the SCO filed its request to amend these parameters and guidelines. Under the rules of statutory construction, a clarification of existing law may be applied to transactions predating its enactment without being considered a retroactive application of the law. The clarification is merely a statement of what the law has always been.⁵

IV. Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Amend the parameters and guidelines to add the following underlined text to the reimbursable activities:

⁴ Government Code section 26602; *People v. Bloom* (1969) 270 Cal.App.2d 731, 734.

⁵ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243; *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, 603.

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a)): the following activity performed by a city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report

Reimbursement is **not** required to interview parties, complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

In addition, reimbursement is **not** required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

In addition, non-substantive amendments to the boilerplate are made to conform to the Government Code.

- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Penal Code Sections 12025(h)(1) and (h)(3),
12031(m)(1) and (m)(3), 13014, 13023, and
13730(a)

Statutes 1989, Chapter 1172 (SB 202); Statutes
1992, Chapter 1338 (SB 1184); Statutes 1993,
Chapter 1230 (AB 2250); Statutes 1998, Chapter
933 (AB 1999); Statutes 1999, Chapter 571 (AB
491); Statutes 2000, Chapter 626 (AB 715);
Statutes 2004, Chapter 700 (SB 1234)

Requested by the State Controller's Office
October 1, 2012.

Case No.: 12-PGA-01 (02-TC-04 and
02-TC-11 and 07-TC-10)

*Crime Statistics Reports for the Department
of Justice; Crime Statistics Reports for the
Department of Justice Amended*

STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ.;
CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION
2, CHAPTER 2.5, ARTICLE 7.

(Adopted January 24, 2014)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted the attached proposed statement of decision and amendment to parameters and guidelines during a regularly scheduled hearing on January 24, 2014. [Witness list will be included in the final statement of decision.]

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/rejected the amendment to parameters and guidelines and statement of decision by a vote of [vote count will be included in the final statement of decision].

I. Background

On October 1, 2012, the State Controller's Office (SCO) filed a request to amend the parameters and guidelines for *Crime Statistics Reports for the Department of Justice* to clarify the scope of the activity mandated by Penal Code section 13730(a), as amended by Statutes 1993, chapter 1230.⁶ The 1993 amendment to the statute added the underlined language in subdivision (a) as follows:

⁶ Government Code section 17557(d)(2)(D) allows a local agency, school district, or the state to file a request to amend the parameters and guidelines to clarify what constitutes reimbursable activities.

- (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.

On June 26, 2008, the Commission approved the test claim with respect to the 1993 amendments to Penal Code section 13730(a), authorizing reimbursement for the following activity: “For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report.” The Commission explained its finding on this statute as follows:

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 a part of this claim.

The Commission 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, the Commission 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. The Commission 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 public⁷ 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, the Commission finds that the 1993 amendment to section 13730 is a new program or higher level of service.

The Commission 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.⁸

On September 30, 2010, the Commission adopted parameters and guidelines, authorizing reimbursement for the activity, beginning July 1, 2001, as follows:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.⁹

⁷ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

⁸ Statement of Decision adopted June 26, 2008 on *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11), pages 17-18.

II. Request to Amend Parameters and Guidelines

In its request to amend the parameters and guidelines, the SCO contends that for the period of July 1, 2001, through June 30, 2011, claimants have filed 2,605 claims totaling \$143 million in costs for the activities listed above, and have inappropriately claimed costs for writing *all* domestic violence incident reports in their claims for reimbursement. The SCO argues that some of the costs are not reimbursable under Penal Code section 13730(a), but should instead be included in other state-mandated programs that reimburse local government for costs incurred under Penal Code section 13730(c). The Commission authorized reimbursement for Penal Code section 13730(c), as amended by different statutes, in *Domestic Violence Information* (CSM 4222), *Domestic Violence Training and Incident Reporting* (CSM 96-362-01), and *Crime Victims' Domestic Violence Incident Reports II* (CSM 02-TC-18), all of which have been suspended by the Legislature. The SCO believes that subdivision (c) of the statute should be interpreted as requiring the written incident report in all cases when it is determined that a domestic violence *crime* is committed, and that subdivision (a) should be interpreted as requiring the incident report in “all other cases” when it is determined that no crime was committed or that the crime committed was not a domestic violence incident. The SCO also contends that some claimants have inappropriately claimed costs under subdivision (a) for interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other ancillary activities. The SCO proposes that the parameters and guidelines be amended by adding the following underlined language:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report, except for those that result in a written report of domestic violence. Such a circumstance could occur where officers are dispatched to the scene of a domestic violence-related call for assistance, but after investigation, determine that either no crime was committed, or that the crime committed was not a domestic violence incident. In such cases, the reimbursable costs to write the report include the costs to conduct the underlying investigation to the extent necessary to write the report. However, this reimbursability does not extend to such ancillary tasks as interviewing parties, completing the booking sheet or restraining order,

⁹ The parameters and guidelines for *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11) were consolidated with *Crime Statistics Reports for the Department of Justice Amended* (07-TC-10), a separate claim addressing Penal Code section 13023 as amended in 2004.

transporting the victim(s) to the hospital, booking the alleged perpetrator, and other related activities.¹⁰

2. Review and edit the report.

III. Positions of the Parties

State Controller's Office

The SCO requests that the Commission amend the parameters and guidelines as explained in the Background. In addition, the SCO submitted comments on the draft staff analysis generally agreeing with the draft staff analysis, but noting that the draft analysis and proposed amendments did not include the activity of "interviewing parties" in the language clarifying the activities that are not eligible for reimbursement.

Interested Persons

On January 2, 2013, Allan Burdick commented on the SCO request to amend the parameters and guidelines, asserting that the amendment is unnecessary. He states:

I have reviewed a random sample of both city and county reimbursement claims filed with the State Controller from over 70 agencies and it appears and other than the one city, I do not think that costs for the items cited by the State Controller have been claimed by 99% of the local agencies.

Mr. Burdick also suggests changing the activity from "review and edit the report" to "review, edit, approve and file the report."

IV. Commission Findings

The SCO raises two issues in its request. The first issue deals with the interpretation of Penal Code section 13730(a) and (c), and the Commission's decisions on those subdivisions. The second issue seeks clarification whether claimants are eligible for reimbursement for "interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities." These issues are analyzed separately below.

A. The SCO's interpretation, that Penal Code section 13730(a) should be limited to situations where no crime is committed, or that the crime committed is not a domestic violence incident, is not supported by the law or the Commission's decisions and, thus, the request to amend the parameters and guidelines in this respect is denied.

1. The SCO's interpretation ignores the Commission's decision and the effect of the suspension of the activity required by existing law.

As indicated above, Penal Code section 13730(a) was amended in 1993 as follows:

¹⁰ In the request to amend the parameters and guidelines, the SCO's proposed amendment did not expressly identify in the language "interviewing parties" as an activity that was not reimbursable. However, the narrative of the request identified the activity and the SCO's comments on the draft staff analysis clarified that the SCO intended to include the activity in the proposed language as an activity that was not eligible for reimbursement.

- (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.

The Commission approved reimbursement “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),” and this language was placed in the parameters and guidelines for the program with little discussion, except to add reasonably necessary activities to review and edit the report.

The SCO contends that the reimbursement claims filed under this mandate have inappropriately requested reimbursement for all domestic violence incident reports. The SCO argues that reimbursement to support all domestic-violence related calls for assistance with a written incident report pursuant to Penal Code section 13730(a) should be limited to situations where a crime has not been committed, or the crime committed is not one of domestic violence. On the other hand, costs incurred to prepare a domestic violence incident report in cases where a domestic violence crime has been committed are covered by other state-mandated programs approving reimbursement for Penal Code section 13730(c), which have been suspended by the Legislature.

The limitations suggested by the SCO are not expressly provided in Penal Code section 13730, the statement of decision on the test claim, or the parameters and guidelines for this program. The plain language of Penal Code section 13730(a) and of the Commission’s decision is to support “*all* domestic-violence related calls for assistance” with a written incident report as described in subdivision (c), identifying the domestic violence incident.

Nevertheless, the SCO bases its argument on the following sentence on page 18 of the test claim statement of decision for this item:

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

This sentence was not explained in the decision and there was no discussion that it required a report only when a domestic violence crime was not committed. However, using this sentence,

the SCO asserts that the language in subdivision (a) requiring a written incident reports for “all calls for assistance,” when compared to the existing language in subdivision (c) requiring a report for all “incidents” of domestic violence, imposes a limited, higher level of service on local agencies for writing only those reports on calls where no domestic violence crime is found. It is correct that the Legislature enacted the 1993 statute with the intent of clarifying the law. The 1993 amendment was based on a proposal by the Attorney General’s Office, Division of Law Enforcement, for legislation to clarify whether calls for assistance in section 13730 should include all calls which are dispatched as domestic violence calls, or only those calls which result in documented and verified cases of domestic violence. The Legislature agreed to amend subdivision (a) to require a written incident report, “as described in subdivision (c),” for “all domestic violence-related calls for assistance.”¹¹

However, the problem with the SCO’s interpretation and reliance on this one sentence is that it does not consider the legal effect of the Legislature’s suspension of the existing requirement in subdivision (c), or the Commission’s findings on that issue. On page 17 of the statement of decision on the test claim, the Commission found that:

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.

The “preexisting law” referred to in this sentence was the language in Penal Code section 13730(c), which provides that “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.” This requirement was suspended by the Legislature, following the Commission’s decision in *Domestic Violence Information* (CSM 4222), approving subdivision (c) as a reimbursable state-mandated activity, and remained suspended at the time the 1993 test claim statute became operative and effective. Pursuant to Government Code section 17581(a), “[n]o 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 [the mandated program is suspended.]” Section 17581(c) then states,

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.

According to the California Supreme Court, once a statute or regulation previously determined to require reimbursement has been properly suspended by the Legislature, there is no duty to comply with the requirement in statute or regulation during the fiscal years of the suspension.

It seems clear that by operation of Government Code section 17581 and the budget items we have noted, the districts are not subject to a duty to comply with

¹¹ 1993 Legislative Bill Proposal, Attorney General’s Office, dated April 16, 1993; Senate Floor Analysis, Third Reading of Assembly Bill 2250, dated April 17, 1993 (1993-1994 Leg. Sess.).

the regulations at issue in the present case, so that no violation of those regulations could be posited as the basis for civil or criminal liability.¹²

Thus, at the time the 1993 test claim statute was enacted, by operation of Government Code section 17581, there was no duty in law to write a domestic violence incident report for incidents of domestic violence. The 1993 statute, which added the language in subdivision (a), therefore, imposed a new program or higher level of service, mandating the activity of supporting *all* domestic violence related calls for assistance with a written incident report.¹³

This interpretation of the activity requiring reimbursement to support all domestic violence related calls for assistance with an incident report is consistent with the Commission's findings and summary of the mandate when it adopted the parameters and guidelines on the program. The analysis adopted by the Commission does not refer to the incident report in subdivision (a) as a higher level of service, requiring reimbursement only for limited situations where it is determined that a domestic violence crime is not committed, but instead acknowledges the suspension of the prior requirement in subdivision (c), and states the following:

As indicated in the Statement of Decision in the present case for 02-TC-04 and 02-TC-11, the Commission had issued prior decisions on the 1984, 1995, and 2001 amendments to Penal Code section 13730, subdivision (c), and adopted parameters and guidelines, which authorized reimbursement for the costs associated with the development of a domestic violence incident report form, writing the domestic violence reports, and compiling and submitting monthly summary reports to the Attorney General.¹⁴ The 1995 and 2001 amendments required additional information to be included in the incident reports; i.e., notations of whether the officer observed signs that the alleged abuser was under the influence of alcohol or controlled substances, whether law enforcement had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim, and whether a firearm or other deadly weapon was present at the scene.¹⁵ *The 1984, 1995, and 2001 mandates have been continuously suspended by the Legislature and made voluntary in each fiscal year of the suspension pursuant to Government Code section 17581.*

The 1993 amendment to Penal Code section 13730, subdivision (a), that requires local law enforcement agencies to "support all domestic-violence related calls for assistance with a written incident report" was not pled in these earlier test claims

¹² *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 309.

¹³ This finding is consistent with the court's findings in *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835, which looked at the law in existence at the time the test claim statute is enacted to determine if there is a new program or higher level of service.

¹⁴ *Domestic Violence Information* (CSM 4222), *Domestic Violence Training and Incident Reporting* (CSM 96-362-01), and *Crime Victims' Domestic Violence Incident Reports II* (CSM 02-TC-18).

¹⁵ See current Penal Code section 13730(c)(1)-(3).

*and, thus, had never been suspended by the Legislature. Thus, the Commission determined that the activity constituted a mandated new program or higher level of service.*¹⁶ (Emphasis added.)

The parameters and guidelines adopted by the Commission authorize reimbursement “for local law enforcement agencies to support *all* domestic-violence related calls for assistance with a written incident report.”

Thus, the SCO’s interpretation of the mandate as only a limited, higher level of service conflicts with the Commission’s decision in this case. The Commission’s decisions on the test claim and parameters and guidelines were not challenged, and remain final binding decisions.¹⁷

2. Prior Commission decisions involving Penal Code section 13730 do not support the SCO’s interpretation of the statute.

The test claim in *Domestic Violence Information* (CSM 4222), was filed on Statutes 1984, chapter 1609, which originally added section 13730 to the Penal Code. Subdivision (c) required law enforcement agencies to develop an incident report form and required that a report shall be written for “all incidents of domestic violence.” The parameters and guidelines adopted by the Commission in 1987 on *Domestic Violence Information* (CSM 4222) authorized reimbursement for subdivision (c), and did not limit the report to situations where a crime occurred, as suggested by the SCO’s interpretation. The reimbursable activity was defined in the parameters and guidelines as follows: “For the writing of mandated reports which shall include domestic violence incident reports, incidents or crime reports directly related to the domestic violence incident.”¹⁸

¹⁶ Item 9, September 30, 2010, Commission hearing, Final Staff Analysis on Proposed Parameters and Guidelines for *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11, 07-TC-10), page 16.

¹⁷ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

¹⁸ See also 1988 Domestic Violence Guidelines developed by the Commission on Peace Officer Standards and Training (POST), which interpreted section 13730(c), as added in 1984, as requiring a report even when the officer cannot determine if a crime has been committed. On page 7 of the guidelines, under the heading “Arrest Criteria and Enforcement Procedures” the guidelines state that:

In the event the suspect has left the scene of the incident, an investigation should be made to determine if a crime has been committed. Penal Code 13730(c) and 13701(i) require that a retrievable report shall be made and complainant shall be advised of the follow-up criminal procedure and case number of the report.

This guideline does not require a report only when a crime has been committed. The guideline states that an investigation “should be made” to determine if a crime has been committed, and that section 13730(c) requires a retrievable report to be made.

Pages 8 and 9 of the guidelines also state that where the alleged victim claims to have a restraining order or stay away order, but does not have possession of the order, the officer may not be able to confirm the validity of the order and cannot make an arrest. In those cases, the

The test claim in *Crime Victims Domestic Violence Incident Reports* (99-TC-08), adopted in September 2003, addressed Family Code section 6228, as amended in 1999, which required local agencies to “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.” The claimant argued that Family Code section 6228 required local agencies to also “prepare” the domestic violence incident report. The Commission disagreed with this request. The Commission found that the Family Code did not require the preparation of the report; Penal Code section 13730(a), as amended in 1993, required the preparation of the report. The Commission noted that a test claim had not been filed on Penal Code section 13730(a) and that subdivision (a) was not suspended by the Legislature. The Commission determined that Penal Code section 13730(a) was an existing requirement when Family Code section 6228 was amended, and thus, preparation of the report was not new. The relevant findings are as follows:

Moreover, preparing a domestic violence incident report does not constitute a new program or higher level of service because preparation of the report is required under prior law. Penal Code section 13730, *as amended in 1993* (Stats. 1993, ch. 1230), added the requirement that “[a]ll domestic violence-related calls for assistance *shall be supported with a written incident report*, as described in subdivision (c), identifying the domestic violence incident.” (Emphasis added.) The claimant did not include the 1993 amendment to Penal Code section 13730 in this test claim. In addition, the 1993 amendment to Penal Code section 13730 has not been included in the Legislature’s suspension of Penal Code section 13730, as originally added in 1984, since neither the Legislature, the Commission, nor the courts, have made the determination that the 1993 statute constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution.¹⁹ Thus, the activity of preparing the domestic violence incident report is an activity currently required by prior law through the 1993 amendment to Penal Code section 13730.²⁰

And, finally, *Domestic Violence Incident Reports II* (02-TC-18), adopted in September 2007, addressed 2001 amendments to Penal Code section 13730(c), adding paragraph (3) to the subdivision to require that the incident report include “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,

guidelines clearly state that “Penal Code section 13730(c) requires that an officer shall write a report, give the victim the police report number and direct the victim to contact the appropriate department unit for follow-up information.”

¹⁹ Government Code section 17581, subdivision (a)(1), requires that the statute or executive order proposed for suspension must first be “determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.”

²⁰ Corrected Statement of Decision, *Crime Victims Domestic Violence Incident Reports* (99-TC-08), page 11.

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.” Subdivision (c)(3) states the following:

- (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:

[¶¶]

- (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 Division 4 (commencing with Section 18250) of Title 2 of Part 6.

Although the Commission acknowledged that the requirement in subdivision (c) to prepare a written domestic violence incident report had been suspended by the Legislature, the requirement in subdivision (a), to support all domestic violence related calls for assistance with a written incident report as described in subdivision (c), had not been suspended, and was required by the state. Thus, including the new firearm and weapon information on the report was not included in the suspension, but was mandated by the state as a new program or higher level of service and eligible for reimbursement. The relevant findings are on pages 14-16 of that decision as follows:

The requirement in subdivision (c) of section 13730 to prepare a written domestic violence incident report has been suspended each year,²¹ except for fiscal year 2003-2004,²² since fiscal 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.

²¹ 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).

²² 2003-2004 Budget Act (Stats. 2003, ch. 157) Final Change Book, p.655, Item 9210-295-0001, Provision 3.

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.”²³

Accordingly, the 1993 amendment to subdivision (a) prevails over the suspension of subdivision (c).²⁴ 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. 1230) ‘merely clarifies’ the reporting requirement of subdivision (c) rather than mandating a new or additional requirement.”

The Commission acknowledges that the analysis herein departs from the 1998 Commission decision. However, the plain language of the 1993 amendment to Penal Code section 13730, subdivision (a), requires a written incident report for all domestic violence calls. This amendment has never been the subject of a test claim, has never been determined by the Legislature or any court to mandate a

²³ *People v. Kuhn* (1963) 216 Cal.App.2d 695, 700.

²⁴ 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.

new program or higher level of service, and is not pled here. Thus, it has not met the requirements of Government Code section 17581 to suspend a statute.

[¶]

The Commission finds, therefore, that existing law in Penal Code section 13730, subdivision (a), requires a written incident report for each domestic violence call. Therefore, 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)(3), is state-mandated.

These decisions were also not challenged, remain final, binding decisions, and are consistent with the Commission's findings in this case.

3. Reimbursement is required to support all domestic-violence related calls for assistance with a written incident report.

Based on the above, the Commission finds that the SCO's assertion that the mandate in Penal Code section 13730(a) is limited to situations where the officer is dispatched to a domestic violence related call for assistance, but after investigation determines that no crime was committed, or that the crime committed was not a domestic violence incident, is not consistent with the law or the Commission's decisions. Therefore, SCO's request to amend the parameters and guidelines in this respect is denied. As the Commission determined, reimbursement is required to support all domestic violence related calls for assistance with a written incident report, including those that result in a crime.

For purposes of clarification, however, other decisions of the Commission impact the reimbursement for writing these domestic violence incident reports, and may cause confusion in the filing of reimbursement claims. Although the Commission determined in *Domestic Violence Incident Reports II* (02-TC-18), that this domestic violence incident report required in subdivision (a) had to include the information in subdivision (c)(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"), reimbursement for including the information required by subdivision (c)(3) in the report is provided in 02-TC-18, and not eligible for reimbursement under the program at issue here, *Crime Statistics Reports for the Department of Justice* (02-TC-04, 02-TC-11). In addition, as noted in the decision in *Domestic Violence Incident Reports II* (02-TC-18), the Commission came to the opposite conclusion on a similar issue and denied the *Domestic Violence Training and Incident Reporting* test claim (CSM-96-362-01) in 1998. In that claim, reimbursement was requested for including information required by Penal Code section 13730(c)(1)(2) into the domestic violence incident report regarding the use of alcohol and controlled substances by the alleged abuser and any prior domestic violence response to the same address. The Commission found in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01) that the activity of including the new information into the report was not mandated by the state since the report required by subdivision (c) was suspended. Although the decision in 96-362-01 did not analyze the language in subdivision (a), the decision to deny reimbursement for including the information

required by Penal Code section 13730(c)(1)(2) remains a final, binding decision.²⁵ Thus, reimbursement for writing the domestic incident report does not include reimbursement for including information on the use of alcohol and controlled substances by the alleged abuser and any prior domestic violence response to the same address. Clarifying language is added to the parameters and guidelines, consistent with these decisions, as follows:

In addition, reimbursement is *not* required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting (CSM-96-362-01)*. Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II (02-TC-18)*.

B. SCO’s request to amend the parameters and guidelines to clarify that reimbursement is *not* required for “interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator” is approved.

The SCO states that local agencies are inappropriately claiming reimbursement for interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities to enforce a crime and assist the victim. The SCO submitted comments generally agreeing with the draft staff analysis, but noting that the draft analysis and proposed amendments did not include the activity of “interviewing parties” in the language clarifying the activities that are not eligible for reimbursement. “Interviewing parties” was included in the narrative of the SCO’s request to amend the parameters and guidelines and analyzed in the draft analysis as an activity that was not eligible for reimbursement, but inadvertently omitted from the language proposed for amendment.

The Commission finds that the activities of interviewing parties, completing the booking sheet or restraining order, transporting the victim to the hospital, booking the alleged perpetrator, and other related activities to enforce a crime and assist the victim are not eligible for reimbursement because they go beyond the scope of the mandate to write the incident report. Investigation, arrests, and treatment of victim are not required by the plain language of the test claim statute and were not found to be reimbursable in the Commission’s decisions on the test claim and parameters and guidelines. In addition, local law enforcement agencies have a preexisting duty to investigate crime.²⁶

Moreover, how officers perform duties relating to investigations and arrests are governed by local policy. Penal Code section 13701 specifically requires each agency to develop and adopt written policies and standards for officers’ responses to domestic violence calls. The policies have to cover arrests, assistance to victims, cite and release policies, et cetera.

²⁵ *California School Boards Assoc.*, *supra*, 171 Cal.App.4th 1183, 1200.

²⁶ Government Code section 26602; *People v. Bloom* (1969) 270 Cal.App.2d 731, 734.

Thus, the Commission approves the SCO's request to amend the parameters and guidelines to clarify that reimbursement is not required to complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

C. The added language clarifying the reimbursable activities is effective during the entire period of reimbursement.

Because these amendments simply clarify the mandated activities and do not make substantive changes to the program, the clarification is effective during the entire period of reimbursement and may be applied by the SCO in its review of reimbursement claims filed before the SCO filed its request to amend these parameters and guidelines. Under the rules of statutory construction, a clarification of existing law may be applied to transactions predating its enactment without being considered a retroactive application of the law. The clarification is merely a statement of what the law has always been.²⁷

V. Conclusion

The Commission partially approves the SCO request to amend the parameters and guidelines for *Crime Statistics Reports for the Department of Justice* with the following underlined language:

Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a)): the following activity performed by a city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report

Reimbursement is **not** required to interview parties, complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

In addition, reimbursement is **not** required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

²⁷ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471, quoting *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243; *Riley v. Hilton Hotels Corp.* (2002) 100 Cal.App.4th 599, 603.

Adopted: September 30, 2010
Amended: January 24, 2014

PARAMETERS AND GUIDELINES

Penal Code Sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3), 13014, 13023, and 13730(a)

Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); and Statutes 2000, Chapter 626 (AB 715)

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

and

Penal Code Section 13023

Statutes 2004, Chapter 700 (SB 1234)

Crime Statistics Reports for the Department of Justice Amended
07-TC-10

I. SUMMARY OF THE MANDATE

On June 26, 2008, the Commission on State Mandates (Commission) considered the *Crime Statistics Reports for the Department of Justice* test claims (02-TC-04 and 02-TC-11) and determined 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 activities:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide the California Department of Justice (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. The Commission 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(h)(1) & (h)(3) & 12031(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(a), Stats. 1993, ch. 1230).

On July 31, 2009, the Commission considered the *Crime Statistics Reports for the Department of Justice Amended* test claim (07-TC-10). The claim was originally filed as an amendment to, and severed from, test claims 02-TC-04 and 02-TC-11, *Crime Statistics Reports for the Department of Justice*. The Commission determined that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on local law enforcement agencies to report the following in a manner to be prescribed by the Attorney General:

- Any information that may be required relative to hate crimes, as defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of one or more of the following *perceived* characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.
- Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of *association with a person or group with one or more of the following actual or perceived characteristics*: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.

On April 12, 2010, the Commission issued a Corrected Statement of Decision in *Crime Statistics Reports for the Department of Justice Amended* (07-TC-10) to correctly identify the operative and effective date of Penal Code section 13023, as amended by Statutes 2004, chapter 700, as January 1, 2005.

These test claims were filed by a city and a county. Although the test claim statutes refer to “local law enforcement agencies” or “local government entity,” the Commission’s findings and decisions are limited to city and county claimants.

On January 24, 2014, the Commission amended the parameters and guidelines to clarify the reimbursable activity related to Penal Code section 13730(a). This amendment is effective for the entire period of reimbursement for that statute, beginning July 1, 2001.

II. ELIGIBLE CLAIMANTS

Any county, city, or city and county.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The City of Newport Beach and the County of Sacramento filed the *Crime Statistics Reports for the Department of Justice* test claims (02-TC-04 and 02-TC-11) on September 6, 2002, and November 22, 2002, respectively, establishing eligibility for reimbursement beginning July 1, 2001. The *Crime Statistics Reports for the Department of Justice Amended* test claim (07-TC-10) was filed as an amendment to 02-TC-04 and 02-TC-11 and, pursuant to Government

Code section 17557 (e), does not affect the filing date or period of reimbursement of the original test claims. However, Penal Code section 13023, as amended by Statutes 2004, chapter 700, became operative and effective on January 1, 2005. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 13023, as amended by Statutes 2004, chapter 700, are reimbursable on or after January 1, 2005.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560, a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. In the event that revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices and receipts.

Evidence corroborating the source documents may include, but is not limited to, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are eligible for reimbursement:

One-Time Activities

- A. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the reporting of the hate crime and demographic information required by Penal Code sections 12025(h)(1) and (h)(3), 12031(m)(1) and (m)(3), 13014, and 13023 to the California Department of Justice and the Attorney General.
- B. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the requirement in Penal Code section 13730 (a) (as amended by Stats. 1993, ch. 1230) to support all domestic violence related calls for assistance with a written incident report.

Ongoing Activities

- A. Homicide Reports: (Pen. Code, § 13014; Stats. 1992, ch. 1338)

For a city, county, or city and county responsible for the investigation and prosecution of a homicide case, to provide the California Department of Justice, on a form distributed by the California Department of Justice, with demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background.

The following activities are eligible for reimbursement:

- 1. Extract demographic information from existing local records about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background, from local records in order to report the information to DOJ.
- 2. Report to the Department of Justice, on a monthly basis, demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background . Reporting may be accomplished electronically via the Electronic-Crime and Arrest Reporting Systems (E-CARS) Plus, or manually by submitting DOJ Form BCIA 15 (Supplemental Homicide Report), or other form distributed in accordance with Penal Code section 13014 by the Department of Justice.
- 3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice.

Reimbursement is not required to review and edit every report.

B. Hate Crime Reports: (Pen. Code, § 13023; Stats. 1989, ch. 1172; Stats. 1998, ch. 933; Stats. 2000, ch. 626; Stats. 2004, ch. 700)

For city, county, and city and county 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 hate crimes:

The following activities are eligible for reimbursement:

1. Extract the information required by the Attorney General relative to hate crimes from existing law enforcement records in order to report the information to the Department of Justice.¹
2. Report to the Department of Justice on an annual and monthly basis, in a manner prescribed by the Attorney General, the information required relative to hate crimes. Reporting may be accomplished electronically via the Hate Crime Analysis, Tracking & Evaluation (HATE) System, manually by submitting the agency crime report, or any other manner prescribed by the Attorney General.
3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice.

Reimbursement is not required to review and edit every report.

C. Firearm Reports: (Pen. Code, §§ 12025(h)(1) & (h)(3) & 12031, (m)(1) & (m)(3); Stats. 1999, ch. 571)

For district attorneys to submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity for 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.

The following activities are eligible for reimbursement *from July 1, 2001, through December 31, 2004 only*:

1. Extract the following information from law enforcement records in order to report the information to the Attorney General: race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.
2. Report to the Attorney General on Form CJSC 4, or in another manner prescribed by the Attorney General, profiles by race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under

¹ Penal Code section 13023 was amended in 2004 to clarify the definition of hate crime as provided in Penal Code section 422.55. (Stats. 2004, ch. 700.)

Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

Reimbursement is not required to review and edit the report.

D. Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730(a); Stats. 1993, ch. 1230)

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.

Reimbursement is *not* required to interview parties, complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

In addition, reimbursement is *not* required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are

withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part_225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORDS RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than ~~60~~90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.