

**ITEM 12**  
**FINAL STAFF ANALYSIS**  
**PROPOSED STATEWIDE COST ESTIMATE**  
**\$1,767,448**

Penal Code Sections 13730(c)(3), 12028.5;  
Statutes 2001, Chapter 483, Statutes 2002, Chapter 833  
*Crime Victims' Domestic Violence Incident Reports II*  
02-TC-18  
County of Los Angeles, Claimant

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**STAFF ANALYSIS**

**Background and Summary of the Mandate**

The test claim statutes require that additional information be included on domestic violence incident report forms regarding the presence of firearms or deadly weapons at the scene of domestic violence incidents and domestic violence-related calls for assistance. The statutes also require officers “at the scene of a domestic violence incident involving a threat to human life or a physical assault” to take temporary custody of firearms or weapons in plain sight or discovered pursuant to a consensual or other lawful search, and provide a procedure for return or disposal of the weapons.

On September 27, 2007, the Commission on State Mandates (Commission) adopted a statement of decision, finding that effective January 1, 2002, Penal Code section 13730(c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance.

Also, effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission found a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (2) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

The Commission adopted the parameters and guidelines on May 27, 2010.<sup>1</sup> Eligible claimants were required to file initial reimbursement claims with the State Controller’s Office (SCO) by February 15, 2011. Late claims are due by February 15, 2012.

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<sup>1</sup> Exhibit A.

## Eligible Claimants and Period of Reimbursement

Any county, city, or city and county is an eligible claimant. The reimbursement period for Penal Code section 13730(c)(3) (Stats. 2001, ch. 483) began on January 1, 2002, and January 1, 2003 for Penal Code section 12028.5 (Stats. 2002, ch. 833).

The Commission approved the following activities for reimbursement:

Effective January 1, 2002, Penal Code section 13730(c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance:

- To include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon. (Pen. Code, § 13730(c)(3).)

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the activities listed below are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (2) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

- To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5(b).)
- To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5(b).)
- To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5. (Pen. Code, § 12028.5(b).)

- To sell or destroy, as provided in subdivision (c) of Section 12028, any firearm or other deadly weapon taken into custody and held for longer than 12 months and not recovered by the owner or person in lawful possession at the time it was taken into custody. Reimbursement for this activity is not required for firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5(e).)
- If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5(f).)
- To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5(g).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5(h).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5(i).)

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the following activities are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, for local agencies, when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search.

- The one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include “the time limit for recovery as required” by section 12028.5. (Pen. Code, § 12028.5(b).)
- If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney’s fees to the prevailing party. (Pen. Code, § 12028.5, (j).)

### **Statewide Cost Estimate**

Staff reviewed the claims data submitted by 52 cities and counties and compiled by the SCO. The actual claims data showed that 340 claims were filed for nine fiscal years for a total of \$1,767,448.<sup>2</sup> Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

#### Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*

There are currently 478 cities and 58 counties in California. Of those, only 52 filed reimbursement claims for this program between 2001 and 2010. If other eligible claimants file late or amended claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late claims for this program may be filed until February 15, 2012.

2. *The number of reimbursement claims filed will vary from year to year.*

This program is based on activities performed by local agencies when firearms or other deadly weapons are discovered during a search or taken into temporary custody at the scene of a domestic violence incident; and for all violence-related calls for assistance. Therefore, the total number of reimbursement claims filed with the SCO will increase or decrease based on the number of incident reports taken by the local agencies.

3. *There may be several reasons that non-claiming cities and counties did not file for reimbursement, including but not limited to:*

- The Commission approved only a portion of this program as a mandate. Therefore, some cities and counties cannot reach the \$1,000 threshold for filing reimbursement claims.
- They did not have supporting documentation to file a reimbursement claim.

4. *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct full field audits, and reduce any claims it deems to be excessive or unreasonable.

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<sup>2</sup> Claims data reported as of June 30, 2011.

## Methodology

*Fiscal Years 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-2010.*

The proposed statewide cost estimate for the above-named fiscal years was developed by totaling the 340 reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes nine fiscal years for a total of \$1,767,448 for the *Crime Victims' Domestic Violence Incident Reports II* program. This averages to \$196,383 annually in costs for the state for this nine-year period.

Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2001-2002	12	\$48,625
2002-2003	32	\$145,675
2003-2004	39	\$181,898
2004-2005	38	\$198,461
2005-2006	42	\$206,213
2006-2007	43	\$227,079
2007-2008	44	\$249,646
2008-2009	42	\$236,910
2009-2010	48	\$272,941
<b>TOTAL</b>	<b>340</b>	<b>\$1,767,448</b>

## **Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate**

On June 9, 2011, Commission staff issued the draft staff analysis and proposed statewide cost estimate for comment.<sup>3</sup> On June 29, 2011, Department of Finance submitted comments recommending updated claims data be used before adopting the proposed statewide cost estimate.<sup>4</sup> Commission staff reviewed claims data reported as of June 30, 2011. There was no change in the total amount claimed for this program.

## **Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$1,767,448** for costs incurred in complying with the *Crime Victims' Domestic Violence Incident Reports II* program.

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<sup>3</sup> Exhibit B.

<sup>4</sup> Exhibit C.