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

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.[1] 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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[1] 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.[2] 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.

[2] 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:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
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
TOTAL	**340**	**$1,767,448**

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.[3] On June 29, 2011, Department of Finance submitted comments recommending updated claims data be used before adopting the proposed statewide cost estimate.[4] 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.

[3] Exhibit B.

[4] Exhibit C.

Adopted: 5/27/10

PARAMETERS AND GUIDELINES

Penal Code Sections 13730, Subdivision (c)(3), 12028.5;

Statutes 2001, Chapter 483, Statutes 2002, Chapter 833

Crime Victims' Domestic Violence Incident Reports II

02-TC-18

I. SUMMARY OF THE MANDATE

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

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

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

- To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
- To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
- To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is not required if either: (1) the firearm or other deadly weapon confiscated is

retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5.[1] (Pen. Code, § 12028.5, subd. (b).)

- To sell or destroy, as provided in subdivision (c) of Section 12028,[2] 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, subd. (e).)
- If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)
- To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful

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[1] Subdivision (f) of section 12028.5 authorizes, within 60 days of seizure, the law enforcement agency to initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned in cases "in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat." This provision also requires notifying the owner.

[2] Section 12028, subdivision (c) requires specified weapons to be surrendered to law enforcement and authorizes disposal of them by sale at public auction or (in subd. (d)) by destruction.

possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)

- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

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

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

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 County of Los Angeles filed the test claim on April 2, 2003, establishing eligibility for reimbursement beginning July 1, 2001. However, Penal Code section 13730, subdivision (c)(3), as amended by Statutes 2001, chapter 483, became effective and operative on January 1, 2002. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 13730, subdivision (c)(3), are reimbursable on or after January 1, 2002. Penal Code section 12028.5, as amended by Statutes 2002, chapter 833, became operative and effective on January 1, 2003. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 12028.5 are reimbursable on or after January 1, 2003.

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, subdivision (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, subdivision (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.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. 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 Activity

A. *Beginning January 1, 2003*, the one-time activity of amending the receipt for a confiscated firearm or other deadly weapon taken at the scene of a domestic violence incident to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)

Ongoing Activities

A. *Beginning January 1, 2002*, for all domestic violence-related calls for assistance, the following activity is reimbursable:

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

B. *Beginning January 1, 2003*, the following activities are reimbursable when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (3) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.[3]

1. To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
2. To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
3. 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

[3] The activities listed in Section IV B are not reimbursable when firearms or other deadly weapons are found in *plain sight* or during *consensual searches*. Seizure of firearms or other deadly weapons found in plain sight or during consensual searches, and the activities that follow the seizure under these circumstances, were required by prior law and do not constitute a new program or higher level of service.

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, subd. (b).)

4. 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, subd. (e).)

5. If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)

6. To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)

7. If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)

8. If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

C. *Beginning January 1, 2003*, the following activity is reimbursable 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:

If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

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 CRF 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 e 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, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[4] 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.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 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, subdivision (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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Exhibit B

ITEM __

DRAFT 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

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.[1] 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.

---

[1] 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.[2] 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.

[2] Claims data reported as of April 22, 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:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
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
TOTAL	**340**	**$1,767,448**

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.

Received
June 29, 2011
Commission on
State Mandates

DEPARTMENT OF FINANCE
EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Exhibit C

June 29, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Proposed Statewide Cost Estimate 02-TC-18 "Crime Victims' Domestic Violence Incident Reports II—County of Los Angeles."

Dear Mr. Bohan:

The Department of Finance (Finance) has reviewed the proposed statewide cost estimate (SCE) on the Crime Victims' Domestic Violence Incident Reports II submitted by the County of Los Angeles (claimant). This SCE was based on claims data submitted to the State Controller's Office (SCO) as of April 22, 2011. We recommend the Commission on State Mandates (CSM) staff seek updated data from the SCO before adoption at the July 28, 2011 CSM hearing.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Jeff Carosone, Principal Program Budget Analyst at (916) 445-8913.

Sincerely,

Nona Martinez

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

Received
June 29, 2011
Commission on
State Mandates

Enclosure A

DECLARATION OF JEFF CAROSONE
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-18

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

6-21-11
at Sacramento, CA

Jeff Carosone

Commission on State Mandates

Original List Date: 4/22/2003
Last Updated: 6/6/2011
List Print Date: 07/08/2011
Claim Number: 02-TC-18
Issue: Crime Victims' Domestic Violence Incident Reports II

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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