

ITEM 3A
TEST CLAIM
FINAL STAFF ANALYSIS

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

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

City of Newport Beach and County of Sacramento, Claimants

EXECUTIVE SUMMARY

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

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

- A local government entity responsible for the investigation and prosecution of a homicide case to provide DOJ with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, §13014).
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, §13023).

- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. Staff finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

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

Recommendation

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

STAFF ANALYSIS

Claimants

City of Newport Beach and County of Sacramento

Chronology

9/6/02 Claimant City of Newport Beach files test claim 02-TC-04
10/24/02 Department of Finance files comments on 02-TC-04
10/25/02 Department of Justice requests extension of time to file comments on 02-TC-04
11/22/02 County of Sacramento files test claim 02-TC-11
1/28/03 Department of Justice files comments on test claim 02-TC-04
3/7/03 Claimants request extension to file rebuttal comments on 02-TC-04 & 02-TC-11 and request consolidation of test claims
3/13/03 Claimants file joint rebuttal comments on 02-TC-04 and 02-TC-11
9/26/07 Commission staff consolidates test claims 02-TC-04 and 02-TC-11
2/15/08 Commission staff issues draft staff analysis
3/7/08 Department of Finance submits comments on draft staff analysis
3/11/08 Claimant County of Sacramento files comments on the draft staff analysis
3/14/08 Commission staff issues final staff analysis and proposed Statement of Decision

Background

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

The Uniform Crime Reporting (UCR) Program is a city, county and state law enforcement program that provides a nationwide view of crime based on the submission of statistics by law enforcement agencies throughout the country. The crime data are submitted either to a state UCR Program or directly to the national UCR Program, administered by the Federal Bureau of Investigation (FBI). The International Association of Chiefs of Police (IACP) envisioned the need for statistics on crime in the 1920s. The IACP's Committee on Uniform Crime Records is a voluntary national data collection effort begun in 1930. Crime data are, for the most part, collected monthly by the UCR Program. The FBI provides report forms, tally sheets, and self-addressed envelopes to agencies that complete the forms and return them directly to the FBI.

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

Penal Code section 13010¹ requires DOJ to collect from state and local entities, on forms developed by DOJ, data necessary for the “work of the department.” (Department is used in the statutes to mean DOJ.) Penal Code section 13010 also provides that DOJ shall: (1) recommend the form and content of records to be maintained by the state and local entities; (2) instruct them in the installation, maintenance and use of such records; (3) process, tabulate, analyze and interpret the data collected; (4) supply data to the FBI and others engaged in the collection of national criminal statistics; (5) present to the Governor an annual report containing the criminal statistics of the preceding calendar year; and (6) present at such other times as the Attorney General may approve reports on special aspects of criminal statistics (Pen. Code, § 13010, subs. (c) – (g)).

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

[E]very other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

(a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

(b) To report statistical data to the department at those times and in the manner that the Attorney General prescribes.

(c) To give to the Attorney General, or his or her accredited agent, access to statistical data for the purpose of carrying out this title. (Pen. Code, § 13020.)

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

Test Claim Statutes

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

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

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

¹ All references are to the Penal Code unless otherwise indicated.

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

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

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

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

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

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

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

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

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

The Legislature amended subdivision (a) (Stats. 1993, ch. 1230) to state that “all domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident.”

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

Resolved by the Senate of the State of California, the Assembly thereof concurring,

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

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

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

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

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

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

Related Commission Decisions

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

Domestic Violence Information, CSM 4222: In 1987, the Commission approved this test claim on Penal Code section 13730, as added by Statutes 1984, chapter 1609. The parameters and guidelines for *Domestic Violence Information* authorize reimbursement for local law enforcement agencies for the “costs associated with the development of a Domestic Violence Incident Report form used to record and report domestic violence calls,” and “for the writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.”

Beginning in fiscal year 1992-93, the Legislature suspended Penal Code section 13730 (as added by Stats. 1984, ch. 1609) pursuant to Government Code section 17581. Suspending a statute means the Legislature assigns a zero-dollar appropriation to the program and makes it optional.

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

The Commission determined that the additional information on the domestic violence incident report was not mandated by the state because the suspension of the statute under Government Code section 17581 made the completion of the incident report optional, so the additional information under the test claim statute came into play only after a local agency elected to complete the incident report.

Based on the language of the suspension statute (Gov. Code, § 17581), the Commission determined, however, that during periods when the state operates without a budget, the original suspension of the mandate would not be in effect. Thus, for the periods when the state operates without a budget until the Budget Act is chaptered and makes the domestic violence incident reporting program optional under Government Code section 17581, the Commission determined the activities required by the 1995 amendment to Penal Code section 13730 are reimbursable.

In 1998, Government Code section 17581 was amended² to close the gap and continue the suspension of programs during periods when the state operates without a budget. The *Domestic*

² Section 17581, subdivision (a), now states the following: “No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and the for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year . . .” (Emphasis added.)

Violence Information and Incident Reporting program has been suspended in every Budget Act since 1992 except for 2003-2004.³

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

Crime Victims' Domestic Violence Incident Reports II, 02-TC-18: This claim, originally submitted as an amendment to (and severed from) test claim 99-TC-08, was adopted September 27, 2007. The Commission found that effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program for local agencies, on all domestic violence-related calls for assistance, to include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon (Pen. Code, § 13730, subd. (c)(3)).

The Commission noted in the analysis that no test claim had been filed on section 13730 as amended by Statutes 1993, chapter 1230, which added to subdivision (a) “All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident.”

Claimants' Position

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

Claimants submitted joint comments in March 2003, rebutting those of the Department of Finance and DOJ. Regarding DOJ's comment about the city claimant claiming costs for county

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

entities, claimants note that the claim has been joined by County of Sacramento. Claimants made other substantive comments that are discussed in the analysis below.

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

State Agency Positions

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

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

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

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

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

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

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

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

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

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.⁵ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.⁷

In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.⁸

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

⁴ Article XIII B, section 6, subdivision (a), (as amended in Nov. 2004) provides:

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

⁵ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

⁶ *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

legislation.¹⁰ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹¹

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹³ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁴

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

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

Annual DOJ Report to the Governor - Penal Code Section 13012

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

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

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

¹⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁴ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Section 13012 by itself only specifies the content of a DOJ report, not a report by a local agency. It refers to the “annual report of the department provided for in Section 13010...” Section 13010 states: “It shall be the duty of the department [of Justice]: (a) To collect data necessary for the department from all persons and agencies mentioned in Section 13020 and from any other appropriate source;” Section 13020, in turn, requires the local agency reports. Section 13020 was not pled by claimants, nor was section 13010. Nor are these sections incorporated by reference into section 13012, the test claim statute. For these reasons, the Commission has no jurisdiction to make determinations on sections 13010 and 13020.¹⁵

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

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

Although it is mentioned as preexisting law, the test claim does not expressly plead section 13020. On page 6 of both test claims, claimants cite the “specific statutory sections that contain the mandated activities” and do not mention section 13020. Nor are any of the statutes and chapters that enacted or amended section 13020 cited in the test claim.¹⁶ Therefore, staff finds that section 13020 was not pled in the test claim.

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

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

¹⁵ Sections 13010, 13012 and 13020 were enacted before 1975 and therefore are not subject to article XIII B, section 6, subdivision (a)(3) of the California Constitution.

¹⁶ Section 13020 was enacted by Statutes 1955, chapter 1128, and amended by Statutes 1965, chapter 238, Statutes 1965, chapter 1916, Statutes 1972, chapter 1377, Statutes 1973, chapter 142, Statutes 1973, chapter 1212, Statutes 1979, chapter 255, Statutes 1979, chapter 860, Statutes 1996, chapter 872.

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

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

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

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

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

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

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

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

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

Homicide Reports - Penal Code Section 13014

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

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

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

Staff also finds that section 13014 constitutes a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public¹⁷ by collecting homicide information for DOJ to report criminal statistics, and because reporting the data is an activity that is unique to local government.

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

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

[T]his reporting was optional at the direction of the DOJ, who could have changed its reporting requirements at any time. Nor does it change the fact that such reporting is no longer option [sic] in light of the current statutes. Now, neither the local entities nor the DOJ itself can opt not to report that which is required by law. The simple fact that the DOJ has been conscientious about devising its crime statistic reports and has ultimately foreseen the direction of the Legislature, does not defeat the existence of current state mandate [sic] and the constitutional guarantee for reimbursement of costs for local agencies.

¹⁷ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

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

The legislative history of section 13014 indicates that “Under current law [¶]...[¶] The Department of Justice is not required by statute to maintain data pertaining to victims of homicide and persons charged with homicide.”¹⁸ This statement in the legislative history suggests that reporting the homicide data is a new program or higher level of service.

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

There is no evidence of an executive order requiring homicide reports. The form provided by DOJ in its comments only shows that DOJ collected homicide information, but not that local agencies were required to provide it. In fact, the form DOJ submitted with its comments states: “In view of the importance of the homicide classification in crime reporting, it is *requested* that the following supplementary report be filled in and transmitted ...”¹⁹ [Emphasis added.] Since the form uses the non-mandatory language “it is requested that ...” staff finds that reporting this homicide information prior to the test claim statute was not mandatory for local agencies.

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

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

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

Hate Crime Reports - Penal Code Section 13023

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

Commencing July 1, 1990, subject to the availability of adequate funding, the Attorney General shall direct local law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any

¹⁸ Senate Third Reading analysis of Senate Bill No. 1182 (1991-1992 Reg. Sess.) as amended August 28, 1992, p. 1.

¹⁹ Comments from the Department of Justice on Test Claim 02-TC-04, January 28, 2003, Exhibit B.

information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability.

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

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

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

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

Staff also finds that section 13023 constitutes a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public²⁰ by collecting hate crime information for DOJ to report criminal statistics, and because reporting the data is an activity that is unique to local government.

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

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

Therefore, staff finds that Penal Code section 13023 is a reimbursable state-mandated program for local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a

²⁰ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin, beginning July 1, 2001 (the beginning of the reimbursement period for this test claim).

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

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

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

¶¶...¶¶

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

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

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

¶¶...¶¶

(3) This subdivision shall remain operative only until January 1, 2005.

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

Staff also finds that sections 12025, subdivision (h)(1) and 12031, subdivision (m)(1) constitute a program within the meaning of article XIII B, section 6 because they carry out the governmental function of providing a service to the public²¹ by collecting concealed and loaded firearm information for DOJ to report criminal statistics, and because reporting the data is an activity that is unique to local government.

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

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

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

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

Domestic Violence Reports – Penal Code Section 13730

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

Based on these prior determinations, staff finds that the Commission does not have jurisdiction over the other amended versions (i.e., the 1984, 1995 & 2001 amendments) of section 13730. An administrative agency does not have jurisdiction to rehear a decision that has become final.²²

Statutes 1993, chapter 1230 added the following to subdivision (a) of section 13730: “All domestic violence related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident.”

In its comments on the test claim, Finance states:

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

Staff disagrees. In order to be suspended by the Legislature, a statute must have “been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies...” (Gov. Code, § 17581.)

This 1993 amendment to section 13730 has never been determined by the Legislature, the Commission, or any court to mandate a new program or higher level of service requiring local agency reimbursement, as required by Government Code section 17581. Therefore, the 1993 amendment is not eligible for suspension by the Legislature.

Thus, based on the mandatory language in the statute, staff finds that section 13730, as amended by Statutes 1993, chapter 1230, imposes a state mandate on local law enforcement agencies to

²² *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

support domestic violence related calls for assistance with a written incident report. Staff also finds that this section, as amended by Statutes 1993, chapter 1230, constitutes a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public²³ by requiring written reports for domestic violence-related calls for assistance, and because making the reports is an activity that is unique to local government.

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

Moreover, preexisting law states:

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

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

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

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

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

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

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

Staff finds that this resolution is not a state mandate within the meaning of article XIII B, section 6 of the California Constitution. First, it “requests” but does not mandate that the victim information be provided to DOJ, a fact pointed out by DOJ in its comments submitted on the test

²³ *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

claim (and the form it promulgates to local agencies also “requests” the information). Second, the California Supreme Court has held that legislative resolutions do not have the force of law.²⁴

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

CONCLUSION

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

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

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

Recommendation

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

²⁴ *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 709.