

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Test Claim on:

Penal Code Section 13701, as amended by  
Chapter 246, Statutes of 1995 ; filed on  
December 27, 1996.

By County of Los Angeles, Claimant.

NO. CSM-96-362-02

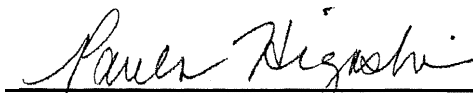
*Domestic Violence Arrest Policies and  
Standards*

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

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates was adopted on  
September 25, 1997.

This Decision shall become effective on September 29, 1997.



PAULA HIGASHI, Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON

Penal Code Section 13701, as amended by Chapter 246, Statutes of 1995; filed on December 27, 1996,

By the County of Los Angeles, Claimant,

NO. CSM - 96-362-02

*Domestic Violence Arrest Policies and Standards*

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

[Presented for adoption on  
September 25, 1997]

**PROPOSED STATEMENT OF DECISION**

This test claim was heard by the Commission on State Mandates (Commission) on July 3 1, 1997, during a regularly scheduled hearing. Mr. Allan Burdick appeared on behalf of the CSAC SB 90 Service and the County of Los Angeles,

At that hearing, evidence both oral and documentary was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

**Issue 1:** Does Penal Code section 13701 as amended by Chapter 246, Statutes of 1995, impose a reimbursable state mandated program upon local agencies pursuant to section 6, article XIII B of the California Constitution<sup>1</sup>, by requiring the development, adoption and implementation of arrest policies for domestic violence offenders with input from local violence agencies?

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<sup>1</sup> Section 6 of article XIII B states: : "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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislature mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

## BACKGROUND AND FINDINGS OF FACT

The County of Los Angeles alleged that Penal Code section 13701, as amended by Chapter 246, Statutes of 1995, imposes a new program or higher level of service in an existing program upon local agencies within the meaning of section 6 of article XIII B of the California Constitution. The statute which is the subject of this test claim is as follows:

Penal Code section 13701 as amended by Chapter 246, Statutes of 1995, adds subdivision (b) and provides the following:

“The written policies shall encourage the *arrest of* domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (Commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person acted in self-defense. *These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.*” (Emphasis added,)

### THE COMMISSION FINDS :

The foregoing provisions require local law enforcement agencies to develop, adopt and implement *arrest* policies for domestic violence offenders by July 1, 1996. The provisions further require the local agencies to seek the input of local domestic violence agencies in the development and implementation of arrest policies. Prior to the amendment of Penal Code section 13701 in 1995, law enforcement agencies were only required to develop written policies for *response* to domestic violence calls and were encouraged, but not obligated, to consult with violence experts. <sup>2</sup>

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<sup>2</sup> Penal Code section 13701, subdivision (a), as *originally* added by Chapter 1609, Statutes of 1984, provides the following: “(a) Every law enforcement agency in this state shall develop, adopt and implement written policies and standards for officers’ *response* to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred. These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following...”

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental entities. Further, the required activity or task must be new or it must create an increased or higher level of service over the former required level of service. To determine if a required activity is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated.<sup>3</sup>

The test claim legislation obligates local law enforcement agencies to develop and implement arrest policies for domestic violence offenders, and further obligates the local agencies to consult with local domestic violence agencies. These activities are performed by local law enforcement agencies who carry out a basic governmental function by providing a service to the public. Such activities are not imposed on state residents generally.<sup>4</sup> Therefore, the first requirement, necessary to determine whether the Legislature has imposed a reimbursable state mandated program, is satisfied.

Moreover, the provisions of the test claim legislation, specifically, subdivision (b) , imposes new requirements for local law enforcement agencies to develop, adopt and implement arrest policies for domestic violence offenders, which were not encompassed in the original state mandated program added by Chapter 1609184. The original program only required the implementation of **response** policies and standards for domestic violence calls, Whereas, the test claim legislation requires the development and implementation of *arrest* policies. The test claim legislation, unlike the original program, also requires local law enforcement agencies to seek input from local violence agencies to assist in the development and implementation of written arrest policies. These new and distinct activities were not required by the Legislature immediately before the enactment of the test claim legislation.

Therefore, the Commission determined that the test claim legislation constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

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“In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts. . . .”

Commission points out that the 1995 test claim legislation added the provisions of subdivision (b) and made paragraph designation and nonsubstantive changes in the provisions contained in subdivisions (c) and (d).

<sup>3</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>4</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

Issue 2: Does Penal Code section 13701 as amended by Chapter 246, Statutes of 1995, impose a reimbursable state mandated program upon local agencies pursuant to section 6, article XIII B of the California Constitution<sup>5</sup>, by requiring the development, adoption and implementation of arrest policies for domestic violence offenders with input from local violence agencies?

Government Code section 175 8 1 provides, in pertinent part, the following:

“(a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year if all of the following apply:

“( 1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to section 6 of article XIII B of the California Constitution.

“(2) The statute or executive order, or portion thereof, has been specifically identified by the Legislature in the Budget Act for that fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

“(b) Notwithstanding any other provision of law, if a local agency elects to implement or give effect to a statute or executive order described in subdivision (a), the local agency may assess fees to persons or entities which benefit from the statute or executive order. Any fee assessed pursuant to this subdivision shall not exceed the costs reasonably borne by the local agency. ”

“ . . . . . ”

The provisions of section 1758 1 provide that if both of the conditions set forth therein are satisfied, the identified state mandated program becomes optional and the affected local agencies are not required to carry out the state program. If the local agency elects to carry out the identified state program, however, it is authorized to assess a fee to recover the costs reasonably borne by the local agency.

<sup>5</sup> Section 6 of article XIII B states: : “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 such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislature mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. ”

The Commission determined that Penal Code section 13701; as originally added by Chapter 1609, Statutes of 1984, imposed a reimbursable state mandated program upon local law enforcement agencies! As previously indicated, this program required all law enforcement agencies to develop, adopt and implement written policies for *response* to domestic violence calls.

However, during fiscal years 1992/93 through 1996/97, the Legislature specifically identified Chapter 1609/84 in the Budget Act for the periods in question pursuant to Government Code section 17581, assigning zero dollar appropriations to the original state mandated program under Chapter 1609/84. Therefore, both conditions set forth in section 17581 were met, making the requirements imposed under the original test claim optional and, thus, no longer state mandated.

Nevertheless, the Commission recognized that the test claim legislation is not affected by the Legislature's actions making the original test claim legislation optional. The instant test claim legislation which added subdivision (b) to Penal Code section 13701, now requires law enforcement agencies to develop and implement arrest policies for domestic violence offenders with input from local domestic violence agencies. These activities are new and distinct, and not encompassed by the original test claim legislation, which merely required all law enforcement agencies to develop, adopt and implement written policies for *response* to domestic violence calls .<sup>7</sup>

Accordingly, the Commission determines the test claim legislation is state mandated and not affected by the Legislature's actions making the original test claim legislation optional under Government Code section 17581.

### Conclusion

Based on the foregoing analysis, the Commission approves this test claim and concludes that Penal Code section 13701, subdivision (b), as amended by Chapter 246, Statutes of 1995, constitutes a reimbursable state mandated program upon local agencies pursuant to section 6, article XIII B of the California Constitution, by requiring the development, adoption and implementation of arrest policies for domestic violence offenders with the input of domestic violence agencies.

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<sup>6</sup> See Statement of Decision, January 22, 1987, CSM-4222, filed by the Madera Police Department, a copy of which is attached as Exhibit F.

<sup>7</sup> It should be noted, however, that *if* the test claim legislation simply added new requirements to a previous, underlying state mandated program made optional by the Legislature under section 17581, the test claim legislation would not be state mandated. Under these circumstances, new requirements under the test claim legislation would be directly merged and connected to an optional or suspended program, i.e., a program not state mandated upon local agencies. (*Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 832 and 836, *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818, *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62.)