Hearing Date: April 24, 2003
J:/mandates/99-TC-08/Suppinfo

ITEM 5

TEST CLAIM
Supplemental Information

Penal Code Section 13730,
As Added and Amended by Statutes 1984, Chapter 1609, and Statutes 1995, Chapter 965

Family Code Section 6228,
As Added by Statutes 1999, Chapter 1022

Crime Victims' Domestic Violence Incident Reports (99-TC-08)

Filed by County of Los Angeles, Claimant

This is to further clarify page 6, footnote 5 of the staff analysis.

Since the operative date of Family Code section 6228 (January 1, 2000), Penal Code section 13730, as originally added by Statutes 1984, chapter 1609, has been suspended by the Legislature pursuant to Government Code section 17581. The Budget Bills suspending Statutes 1984, chapter 1609, are listed below:

- Statutes 1999, chapter 50, Item 9210-295-0001, Schedule (8), Provision 2.
- Statutes 2000, chapter 52, Item 9210-295-0001, Schedule (8), Provision 3.
- Statutes 2001, chapter 106, Item 9210-295-0001, Schedule (8), Provision 3.
- Statutes 2002, chapter 379, Item 9210-295,0001, Schedule (8), Provision 3.

Hearing Date: April 24, 2003
J:/mandates/99-TC-08/FSA

ITEM 5

TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Section 13730,
As Added and Amended by Statutes 1984, Chapter 1609, and Statutes 1995, Chapter 965

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Crime Victims' Domestic Violence Incident Reports (99-TC-08)

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Crime Victims' Domestic Violence Incident Reports (99-TC-08)

Filed by County of Los Angeles, Claimant

Executive Summary

Background

This test claim has been filed on two statutes; Penal Code section 13730, as added in 1984 and amended in 1995, and Family Code section 6228, as added in 1999. Penal Code section 13730 requires local law enforcement agencies to develop and prepare domestic violence incident reports as specified by the statute. Family Code section 6228 requires local law enforcement agencies to provide, without charge, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence upon request within a specified time period.

Claimant's Position

The claimant contends that the test claim legislation imposes a reimbursable state-mandated program upon local law enforcement agencies to prepare domestic violence incident reports, store the reports for five years, and retrieve and copy the reports upon request of the domestic violence victim. The claimant contends that it takes 30 minutes to prepare each report, 10 minutes to store each report, and 15 minutes to retrieve and copy each report upon request by the victim. The claimant states that from January 1, 2000, until June 30, 2000, the County prepared and stored 4,740 reports and retrieved 948 reports for victims of domestic violence. The claimant estimates costs during this six-month time period in the amount of $181,228.

Position of the Department of Finance

The Department of Finance filed comments on June 16, 2000, concluding that Family Code section 6228 results in costs mandated by the state. The Department further states that the nature and extent of the specific required activities can be addressed in the parameters and guidelines developed for the program. The Department of Finance did not file comments on the draft staff analysis.

Staff Analysis

For the reasons provided in the analysis, staff finds as follows:

- The Commission does not have jurisdiction to retry the issue whether Penal Code section 13730, as added in 1984 and amended in 1995, constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports because the Commission, in 1987 and 1998, adopted statements of decision approving the activity of preparing the report in prior test claims on Penal Code section 13730 (*Domestic Violence Information*, CSM 4222; *Domestic Violence Training and Incident Reporting*, CSM 96-362-01).
- Family Code section 6228 does not mandate local law enforcement agencies to prepare a report or face sheet.
- Family Code section 6228 does not impose a new program or higher level of service for the activities of providing, retrieving, and copying information related to a domestic violence incident because local agencies were required, under prior law, to perform these activities pursuant to the California Public Records Act. (Gov. Code, § 6254 subd. (f).)
- Family Code section 6228 does not impose a new program or higher level of service for the activity of informing the victim of the reasons why, for good cause, the incident report and fact sheet are not available within the statutory time limits because local agencies were required, under prior law, to perform this activity pursuant to the California Public Records Act. (Gov. Code, § 6253, subd. (c).)
- Family Code section 6228 imposes a new program or higher level of service, and costs mandated by the state, for the activity of storing the domestic violence incident report and face sheet for five years from the date the report was completed.

Conclusion

Staff concludes that Family Code section 6228, as added by Statutes 1999, chapter 1022, mandates a new program or higher level of service for local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514 for the following activity only:

- Storing domestic violence incident reports and face sheets for five years. (Fam. Code, § 6228, subd. (e).)

Staff further concludes that the Commission does not have jurisdiction to retry the issue whether Penal Code section 13730, as added in 1984 and amended in 1995, constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

Staff Recommendation

Staff recommends that the Commission adopt the staff analysis, which partially approves this test claim.

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STAFF ANALYSIS

Claimant

County of Los Angeles

Chronology

5/15/00	Claimant files test claim with Commission
5/18/00	Commission deems test claim complete
6/20/00	Department of Finance files comments on test claim
3/06/03	Draft staff analysis is issued
3/10/03	Claimant requests extension of time to respond to draft staff analysis
3/13/03	Claimant's request for extension of time is denied
3/25/03	Claimant files comments on draft staff analysis
4/02/03	Claimant files proposed amendment to test claim
4/11/03	Commission deems proposed amendment incomplete

Background

This test claim has been filed on two statutes; Penal Code section 13730, as added in 1984 (Stats. 1984, ch. 1609) and amended in 1995 (Stats. 1995, ch. 965), and Family Code section 6228, as added in 1999 (Stats. 1999, ch. 1022).

In 1987, the Commission approved a test claim filed by the City of Madera on Penal Code section 13730, as added by Statutes 1984, chapter 1609, as a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution (*Domestic Violence Information*, CSM 4222). The parameters and guidelines for *Domestic Violence Information* authorized 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."[1]

Beginning in fiscal year 1992-93, the Legislature, pursuant to Government Code section 17581, suspended Penal Code section 13730, as added by Statutes 1984, chapter 1609. With the suspension, the Legislature assigned a zero-dollar appropriation to the mandate and made the program optional.

In 1995, the Legislature amended Penal Code section 13730, subdivision (c). (Stats. 1995, ch. 965.) As amended, Penal Code section 13730, subdivision (c)(1)(2), required law enforcement agencies to include in the domestic violence incident report additional information relating to the use of alcohol or controlled substances by the abuser, and any prior domestic violence responses to the same address.

[1] Exhibit C.

In February 1998, the Commission considered a test claim filed by the County of Los Angeles on the 1995 amendment to Penal Code section 13730 (*Domestic Violence Training and Incident Reporting*, CSM 96-362-01). The Commission concluded 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 itself optional, and 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 plain language of the suspension statute (Gov. Code, § 17581), the Commission determined, however, that during window periods when the state operates without a budget, the original suspension of the mandate would not be in effect. Thus, the Commission concluded that for the limited window 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 activities required by the 1995 amendment to Penal Code section 13730 were reimbursable under article XIII B, section 6.[2]

In 1998, Government Code section 17581 was amended to close the gap and continue the suspension of programs during window periods when the state operates without a budget.[3] In 2001, the California Supreme Court upheld Government Code section 17581 as constitutionally valid.[4] The Domestic Violence Information and Incident Reporting programs remained suspended in the 2002 Budget Act.[5]

Test Claim Statutes

Penal Code section 13730, as added in 1984 and amended in 1995, requires local law enforcement agencies to develop and prepare domestic violence incident reports as specified by statute. Penal Code section 13730 states the following:

> (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons were involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number

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[2] Exhibit C.

[3] Government Code 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.)

[4] *Carmel Valley Fire Protection District v. State of California* (2001) 25 Cal.4th 287, 297.

[5] The 2002 State Budget Act (Stats. 2002, ch. 379, Item 9210-295-0001). The Governor's Proposed Budget for fiscal year 2003-04 proposes to continue the suspension of the domestic violence incident report.

of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report 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. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency has previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

Family Code section 6228 requires state and local law enforcement agencies to provide, without charge, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence upon request within a specified period of time. Family Code section 6228, as added in 1999, states the following:

(a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.

(b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence

incident report shall be made available to the victim no later than 10 working days after the request is made.

(d) Persons requesting copies under this section shall present state or local law enforcement with identification at the time a request is made.

(e) This section shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incidence report.

(f) This section shall be known, and may be cited, as the Access to Domestic Violence Reports Act of 1999.

According to the bill analysis prepared by the Assembly Judiciary Committee, section 6228 was added to the Family Code for the following reasons:

> The author notes that victims of domestic violence do not have an expedited method of obtaining police reports under existing law. Currently, victims of domestic violence must write and request that copies of the reports be provided by mail. It often takes between two and three weeks to receive the reports. Such a delay can prejudice victims in their ability to present a case for a temporary restraining order under the Domestic Violence Prevention Act. This bill remedies that problem by requiring law enforcement agencies to provide a copy of the police report to the victim at the time the request is made if the victim personally appears.
>
> The purpose of restraining and protective orders issued under the DVPA [Domestic Violence Prevention Act] is to prevent a recurrence of domestic violence and to ensure a period of separation of the persons involved in the violent situation. According to the author, in the absence of police reports, victims may have difficulty presenting the court with proof of a past act or acts of abuse and as a result may be denied a necessary restraining order which could serve to save a victim's life or prevent further abuse. By increasing the availability of police reports to victims, this bill improves the likelihood that victims of domestic violence will have the required evidence to secure a needed protective order against an abuser.
>
> In addition to the lack of immediate access to copies of police reports, the author points to the cost of obtaining such copies. For example, in Los Angeles County the fee is $13 per report. These fees become burdensome for victims who need to chronicle several incidents of domestic violence. For some the expense may prove prohibitive.[6]

Claimant's Position

The claimant contends that the test claim legislation imposes a reimbursable state-mandated program upon local law enforcement agencies to prepare domestic violence incident reports, store the reports for five years, and retrieve and copy the reports upon

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[6] Exhibit C.

request of the domestic violence victim. The claimant contends that it takes 30 minutes to prepare each report, 10 minutes to store each report, and 15 minutes to retrieve and copy each report upon request by the victim. The claimant states that from January 1, 2000, until June 30, 2000, the County prepared and stored 4,740 reports and retrieved 948 reports for victims of domestic violence. The claimant estimates costs during this six-month time period in the amount of $181,228.

The claimant filed comments on the draft staff analysis, which are summarized and addressed in the analysis below.

Position of the Department of Finance

The Department of Finance filed comments on June 16, 2000, concluding that Family Code section 6228 results in costs mandated by the state. The Department further states that the nature and extent of the specific required activities can be addressed in the parameters and guidelines developed for the program. The Department of Finance did not file comments on the draft staff analysis.

Discussion

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 constitute a "new program" or 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 analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation.[10] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[11]

This test claim presents the following issues:

- Does the Commission have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports?

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

[8] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[9] *Id.*

[10] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835.

[11] Government Code section 17514; *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 1264, 1284.

- Is Family Code section 6228 subject to article XIII B, section 6 of the California Constitution?
- Does Family Code section 6228 mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does Family Code section 6228 impose "costs mandated by the state" within the meaning of Government Code sections 17514?

These issues are addressed below.

I. Does the Commission have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports?

The test claim filed by the claimant includes Penal Code section 13730, as added in 1984 and amended in 1995. The claimant acknowledges the Commission's prior final decisions on Penal Code section 13730, and acknowledges the Legislature's suspension of the program. Nevertheless, the claimant argues that Penal Code section 13730, as well as Family Code section 6228, constitute a reimbursable state-mandated program for the activity of preparing domestic violence incident reports. In comments to the draft staff analysis, the claimant argues as follows:

> Penal Code section 13730 mandates that "domestic violence incident reports" be prepared. This mandate was found to be reimbursable by the Commission. [Footnote omitted.] Therefore, this reporting duty was new, not required under prior incident reporting law.
>
> Now, "domestic violence incident reports" must be prepared–and-provided to domestic violence victims upon their request, without exception, in accordance with Family Code section 6228, and in accordance with Penal Code section 13730, as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995 . . .[12]

The claimant further contends that "the duty to prepare and provide domestic violence incident reports to domestic violence victims was not made 'optional' under Government Code section 17581." (Emphasis in original)[13]

For the reasons provided below, staff finds that the Commission does not have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void. In *City and County of San Francisco v. Ang*, the court held

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[12] Claimant's comments to draft staff analysis, pages 2-3. (Exhibit D.)

[13] *Id.* at pages 4-6.

that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is conclusive of the issues involved in the decision.[14]

These principles are consistent with the purpose behind the statutory scheme and procedures established by the Legislature in Government Code section 17500 and following, which implement article XIII B, section 6 of the California Constitution. As recognized by the California Supreme Court, Government Code section 17500 and following were established for the "express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."[15]

Government Code section 17521 defines a test claim as follows: " 'Test claim' means the first claim, including claims joined or consolidated with the first claim, filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." Government Code section 17553, subdivision (b), requires the Commission to adopt procedures for accepting more than one claim on the same statute or executive order if the subsequent test claim is filed within 90 days of the first claim and consolidated with the first claim. Section 1183, subdivision (c), of the Commission's regulations allow the Commission to consider multiple test claims on the same statute or executive order only if the issues presented are different or the subsequent test claim is filed by a different type of local governmental entity.

Here, the issue presented in this test claim is the same as the issue presented in the prior test claim; i.e., whether the requirement to prepare a domestic violence incident report constitutes a reimbursable state-mandated activity under article XIII B, section 6 of the California Constitution. The Commission approved CSM 4222, *Domestic Violence Information*, and has already authorized reimbursement for "writing" the domestic violence incident reports. Moreover, this test claim was filed more than 90 days after the original test claims on Penal Code section 13730.

Accordingly, staff finds that the Commission does not have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

The remaining analysis addresses the claimant's request for reimbursement for compliance with Family Code section 6228.

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[14] *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697; See also, *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final. (Exhibit C.)

[15] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333.

II. Is Family Code Section 6228 Subject to Article XIII B, Section 6 of the California Constitution?

In order for Family Code section 6228 to be subject to article XIII B, section 6 of the California Constitution, the statute must constitute a "program." The California Supreme Court, in the case of *County of Los Angeles* v. *State of California*[16], defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[17]

The plain language of Family Code section 6228 requires local law enforcement agencies to provide, without charging a fee, one copy of the domestic violence incident report and/or face sheet to victims of domestic violence within a specified time period. As indicated above, the purpose of the legislation is to assist victims in supporting a case for a temporary restraining order against the accused.

Staff finds that Family Code section 6228 qualifies as a program under article XIII B, section 6. As determined by the Second District Court of Appeal, police protection is a peculiarly governmental function.[18] The requirement to provide a copy of the incident report to the victim supports effective police protection in the area of domestic violence.[19] Moreover, the test claim statute imposes unique requirements on local law enforcement agencies that do not apply generally to all residents and entities in the state.

Accordingly, staff finds that Family Code section 6228 is subject to article XIII B, section 6 of the California Constitution.

III. Does Family Code Section 6228 Mandate a New Program or Higher Level of Service on Local Law Enforcement Agencies?

The claimant alleges that Family Code section 6228 mandates a new program or higher level of service within the meaning of article XIII B, section 6, for the activities of preparing, storing, retrieving, and copying domestic violence incident reports upon request of the victim.

Family Code Section 6228 Does Not Mandate Local Law Enforcement Agencies to Prepare a Report or a Face Sheet

First, the plain language of Family Code section 6228 does not mandate or require local law enforcement agencies to prepare a domestic violence incident report or a face sheet. Rather, the express language of the statute states that local law enforcement agencies "shall *provide*, without charging a fee, one copy of all domestic violence incident report

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[16] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[17] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

[18] *Id.*

[19] *Ante*, footnote 1.

face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request." (Emphasis added.)

The claimant acknowledges that Family Code section 6228 does not expressly require the local agency to prepare a report. The claimant argues, however, that preparation of a report under Family Code section 6228 is an "implied mandate" because, otherwise, victims would be requesting non-existent reports.[20, 21] Staff disagrees.

Pursuant to the rules of statutory construction, courts and administrative agencies are required, when the statutory language is plain, to enforce the statute according to its terms. The California Supreme Court explained that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted][22]

In this regard, courts and administrative agencies may not disregard or enlarge the plain provisions of a statute, nor may they go beyond the meaning of the words used when the words are clear and unambiguous. Thus, courts and administrative agencies are prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[23] This prohibition is based on the fact that the California Constitution vests the Legislature, and not the Commission, with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly:

> A strict construction of section 6 is in keeping with the rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power "are to be construed strictly, and are not to be extended to include matters not covered by the language used." ... "Under our form of government, policymaking authority is vested in the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation." [Citations omitted.] Under these

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[20] Claimant's test claim filing, page 10 (Exhibit A); Claimant's comments on draft staff analysis, pages 1, 7-10 (Exhibit D).

[21] The claimant also argues that the activity of "preparing" the domestic violence incident report was originally mandated by Penal Code section 13730. (Claimant's comments to draft staff analysis, pp. 1 and 9, Exhibit D.) As indicated under Issue 1 of this analysis, staff agrees. But, the Commission already made that determination and, thus, no longer has jurisdiction to revisit the issue in this test claim.

[22] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911. (Exhibit C.)

[23] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011. (Exhibit C.)

principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding policies."[24]

Moreover, legislative history of Family Code section 6228 supports the conclusion that the Legislature, through the test claim statute, did not require local agencies to prepare an incident report. Rather, legislative history indicates that local agencies were required under prior law to prepare an incident report. The analyses of the bill that enacted Family Code section 6228 all state that under prior law, a victim of domestic violence could request in writing that a copy of the report be provided by mail.[25] The analysis prepared by the Assembly Appropriations Committee dated September 1, 1999, further states that "[a]ccording to the California State Sheriff's Association, reports are currently available for distribution within 3-12 working days," and that "agencies currently charge a fee of $5-$15 per report."[26]

Accordingly, staff finds that Family Code section 6228 does not mandate local agencies to prepare a domestic violence incident report or a face sheet and, thus, reimbursement is not required for this activity under article XIII B, section 6 of the California Constitution.

Family Code Section 6228 Does Not Impose a New Program or Higher Level of Service for the Activities of Providing, Retrieving, and Copying Information Related to a Domestic Violence Incident.

Family Code section 6228 expressly requires local law enforcement agencies to perform the following activities:

- Provide one copy of all domestic violence incident report face sheets to the victim, free of charge, within 48 hours after the request is made. If, however, the law enforcement agency informs the victim of the reasons why, for good cause, the face sheet is not available within that time frame, the law enforcement agency shall make the face sheet available to the victim no later than five working days after the request is made.
- Provide one copy of all domestic violence incident reports to the victim, free of charge, within five working days after the request is made. If, however, the law enforcement agency informs the victim of the reasons why, for good cause, the incident report is not available within that time frame, the law enforcement agency shall make the incident report available to the victim no later than ten working days after the request is made.
- The requirements in section 6228 shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incident report.

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[24] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

[25] Bill Analysis of Assembly Judiciary Committee, dated September 10, 1999; Senate Floor Analysis dated September 8, 1999; Bill Analysis by the Assembly Appropriations Committee, dated September 1, 1999. (Exhibit C.)

[26] Exhibit C.

Staff finds that the claimed activities of "retrieving" and "copying" information related to a domestic violence incident do not constitute a new program or higher level of service. Since 1981, Government Code section 6254, subdivision (f), of the California Public Records Act has required local law enforcement agencies to disclose and provide records of incidents reported to and responded by law enforcement agencies to the victims of an incident.[27] Government Code section 6254, subdivision (f), states in relevant part the following:

> [S]tate and local law enforcement agencies shall disclose the names and addresses of the persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident . . . .

Except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation, law enforcement agencies are required to disclose and provide to the victim the following information:

- The full name and occupation of every individual arrested by the agency; the individual's physical description; the time and date of arrest; the factual circumstances surrounding the arrest; the time and manner of release or the location where the individual is currently being held; and all charges the individual is being held upon;[28] and
- The time, substance, and location of all complaints or requests for assistance received by the agency; the time and nature of the response; the time, date, and location of the occurrence; the time and date of the report; the name and age of the victim; the factual circumstances surrounding the crime or incident; and a general description of any injuries, property, or weapons involved.[29]

Although the general public is denied access to the information listed above, parties involved in an incident who have a proper interest in the subject matter are entitled to such records.[30] The disclosure of a domestic violence incident report under the Government Code section 6254, subdivision (f), of California Public Records Act is proper.[31]

Furthermore, the information required to be disclosed to victims under Government Code section 6254, subdivision (f), satisfies the purpose of the test claim statute. As indicated

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[27] Government Code section 6254 was added by Statutes 1981, chapter 684. Section 6254 was derived from former section 6254, which was originally added in 1968 (Stats. 1968, ch. 1473).

[28] Government Code section 6254, subdivision (f)(1).

[29] Government Code section 6254, subdivision (f)(2).

[30] *Vallejos v. California Highway Patrol* (1979) 89 Cal.App.3d 781, 786. (Exhibit C.)

[31] *Baugh v. CBS, Inc.* (1993) 828 F.Supp. 745, 755. (Exhibit C.)

in the legislative history, the purpose of the test claim statute is to assist victims of domestic violence in obtaining restraining and protective orders under the Domestic Violence Prevention Act. Pursuant to Family Code section 6300 of the Domestic Violence Prevention Act, a protective order may be issued to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. Staff finds that the disclosure of information describing the factual circumstances surrounding the incident pursuant to Government Code section 6254, subdivision (f), is evidence that can support a victim's request for a protective order under Family Code section 6300.

Finally, staff acknowledges that the requirements under the test claim statute and the requirements under the Public Records Act are different in two respects. First, unlike the test claim statute, the Public Records Act does not specifically mandate when law enforcement agencies are required to disclose the information to victims. Rather, Government Code section 6253, subdivision (b), requires the local agency to make the records "promptly available." Under the test claim statute, law enforcement agencies are required to provide the domestic violence incident report face sheets within 48 hours or, for good cause, no later than five working days from the date the request was made. The test claim statute further requires law enforcement agencies to provide the domestic violence incident report within five working days or, for good cause, no later than ten working days from the date the request was made. While the time requirement imposed by Family Code section 6228 is specific, the activities of providing, retrieving, and copying information related to a domestic violence incident are not new and, thus, do not constitute a new program or higher level of service.

Second, unlike the test claim statute, the Public Records Act authorizes local agencies to charge a fee "covering the direct costs of duplication of the documentation, or a statutory fee, if applicable."[32] The test claim statute, on the other hand, requires local law enforcement agencies to provide the information to victims free of charge.

Although the test claim statute may result in additional costs to local agencies because of the exclusion of the fee authority, those costs are not reimbursable under article XIII B, section 6. The California Supreme Court has ruled that evidence of additional costs alone does not automatically equate to a reimbursable state-mandated program under section 6. Rather, the additional costs must result from a new program or higher level of service. In *County of Los Angeles v. State of California*, the Supreme Court stated:

> If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount

[32] Government Code section 6253, subdivision (b).

> to an "increased level of service," but not under the post-1975 statutory scheme [after article XIII B, section 6 was adopted].[33]

The Supreme Court affirmed this principle in *Lucia Mar Unified School District v. Honig*:

> We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.[34]

As indicated above, the state has not mandated a new program or higher level of service to provide, retrieve, and copy information relating to a domestic violence incident to the victim. Moreover, the First District Court of Appeal, in the *County of Sonoma* case, concluded that article XIII B, section 6 does not extend "to include concepts such as lost revenue."[35, 36]

Accordingly, staff finds that the activities of providing, retrieving, and copying information related to a domestic violence incident do not constitute a new program or higher level of service.

Family Code Section 6228 Does Not Impose a New Program or Higher Level of Service for the Activity of Informing the Victim of the Reasons Why, For Good Cause, the Incident Report and Face Sheet are not Available within the Statutory Time Limits.

Family Code section 6228, subdivision (b), states that the domestic violence incident report face sheet shall be made available to a victim no later than 48 hours after the request, unless the law enforcement agency informs the victim of the reasons why, for good cause, the face sheet is not available within 48 hours. Under these circumstances,

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[33] *County of Los Angeles, supra*, 43 Cal.3d at pp. 55-56.

[34] *Lucia Mar Unified School District v. Honig, supra*, 44 Cal.3d at p. 835; see also, *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[35] *County of Sonoma, supra*, 84 Cal.App.4th at page 1285.

[36] In comments to the draft staff analysis, the claimant cites analyses prepared by the Department of Finance, Legislative Counsel, and the Assembly Appropriations Committee on the test claim statute that indicate the lost revenues may be reimbursable to support its contention that Family Code section 6228 imposes a reimbursable state-mandated program. (Exhibit D, pp. 11-14.)

But, these analyses are not determinative of the mandate issue. The statutory scheme in Government Code section 17500 et seq. contemplates that the Commission, as a quasi-judicial body, has the sole and exclusive authority to adjudicate whether a state mandate exists. (*City of San Jose, supra*, 45 Cal.App.4th 1802, 1817-1818, quoting *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, and *Kinlaw v. State of California, supra*, 54 Cal.3d at p. 333.) Moreover, as indicated in the analysis, the conclusion that the activities of providing, retrieving, and copying do not constitute a new program or higher level of service is supported by case law.

the law enforcement agency is required to provide the face sheet to the victim within five working days after the request is made.

Family Code section 6228, subdivision (c), contains a similar provision. Subdivision (c) states that the domestic violence incident report shall be made available to a victim no later than five working days after the request, unless the law enforcement agency informs the victim of the reasons why, for good cause, the incident report is not available within five working days. Under these circumstances, the law enforcement agency is required to provide the incident report to the victim within ten working days after the request is made.

Staff finds that the activity of informing the victim of the reasons why, for good cause, the incident report and the face sheet are not available within the statutory time limits does not constitute a new program or higher level of service.

Since 1981, Government Code section 6253 of the Public Records Act has required law enforcement agencies to perform the same activity. Subdivision (c) of Government Code section 6253 states that each agency is required to determine whether a request for public records seeks copies of disclosable public records in the possession of the agency and notify the person making the request of the determination and the reasons of the determination within ten days of the request. Government Code section 6253, subdivision (c), further provides that the time limit may be extended if the agency notifies the person making the request, by written notice, of the reasons for the extension.[37]

Although the time limits defined in Government Code section 6253 and Family Code section 6228 are different, the activity of informing the victim of the reasons why, for good cause, the incident report and face sheet are not available within the statutory time limits is not new and, thus, does not constitute a new program or higher level of service.

Storing the Domestic Violence Incident Report and Face Sheet for Five Years Constitutes a New Program or Higher Level of Service.

Family Code section 6228, subdivision (e), states that the requirements in section 6228 shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incident report. The claimant contends that subdivision (e) imposes a new program or higher level of service on local law enforcement agencies to store the domestic violence incident report for five years. Staff agrees.

Under prior law, local law enforcement agencies are required to provide daily reports of misdemeanor and felony offenses, and a monthly report on domestic violence calls, to the Attorney General and the Department of Justice.[38] But, the state has not previously mandated any record retention requirements on local agencies for information provided

---

[37] This activity derives from Government Code section 6256.1, which was added by Statutes 1981, chapter 968. In 1998, section 6256.1 was repealed and renumbered section 6253.

[38] Penal Code section 11107 (added by Stats. 1953, ch. 1385); Penal Code section 13730 (added by Stats. 1984, ch. 1609). As indicated above, Penal Code section 13730 has been suspended by the Legislature.

to victims of domestic violence. Record retention policies were left to the discretion of the local agency.

Accordingly, staff finds that storing the domestic violence incident report and face sheet for five years constitutes a new program or higher level of service.

Thus, the Commission must continue its inquiry to determine if storing the domestic violence incident report results in increased costs mandated by the state.

IV. Does Family Code Section 6228 Impose Costs Mandated by the State Within the Meaning of Government Code Section 17514?

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant states that it incurred $24,856 to store domestic violence incident reports from January 1, 2000, to June 30, 2000[39] and that none of the exceptions to finding a reimbursable state-mandated program under Government Code section 17556 apply here.

Staff finds that the requirement to store domestic violence incident reports pursuant to Family Code section 6228, subdivision (e), results in costs mandated by the state under Government Code section 17514, and that none of the exceptions under Government Code section 17556 apply to this activity.

Conclusion

Staff concludes that Family Code section 6228, as added by Statutes 1999, chapter 1022, mandates a new program or higher level of service for local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514 for the following activity only:

- Storing domestic violence incident reports and face sheets for five years. (Fam. Code, § 6228, subd. (e).)

Staff further concludes that the Commission does not have jurisdiction to retry the issue whether Penal Code section 13730, as added in 1984 and amended in 1995, constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

Staff Recommendation

Staff recommends that the Commission adopt the staff analysis, which partially approves this test claim.

---

[39] Schedule 1 attached to Test Claim Filing. (Exhibit A, Bates page 137.)

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EXHIBIT A

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

MICHAEL L. GALINDO
ACTING AUDITOR-CONTROLLER

May 11, 2000

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Test Claim
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

The County of Los Angeles submits this test claim to obtain timely and complete reimbursement for the State-mandated local program in the referenced statutes.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

Michael L. Galindo
Acting Auditor-Controller

MLG:JN:LK
Enclosures

County of Los Angeles Test Claim
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

State of California
COMMISSION ON STATE MANDATES
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MAY 15 2000

COMMISSION ON STATE MANDATES

Claim No.

TEST CLAIM FORM

Local Agency or School District Submitting Claim

Los Angeles County

Contact Person

Leonard Kaye

Telephone No.

(213) 974-8564

Address

500 West Temple Street, Room 603
Los Angeles, California 90012

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of "costs mandated by the state" within the meaning of section 17514 of the Government Code, and section 6, article XIIIB of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

See page 1

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Michael L. Galindo
Acting Auditor-Controller

Telephone No.

(213) 974-0729

Signature of Authorized Representative

Michael Galindo

Date

5-11-00

County of Los Angeles Test Claim
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

Mandated Reports

Penal Code Section 13730 as added by Chapter 1609, Statutes of 1984 and as amended by Chapter 965, Statutes of 1995 and Family Code Section 6228, as added by Chapter 1022, Statutes of 1999 [hereinafter referred to as the subject law] mandates that the County prepare a domestic violence incident report and provide it free of charge as requested by domestic violence victims.

In particular, domestic violence incident reports must be provided to victims of domestic violence pursuant to section 6228 of the Family Code as added by Chapter 1022, Statutes of 1999:

> "(a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211. [Emphasis added.]
>
> (b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made. [Emphasis added.]

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

(d) Persons requesting copies under this section shall present state or local law enforcement with identification at the time a request is made.

(e) This section shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incidence report." [Emphasis added.]

Therefore, Family Code section 6228, as added by Chapter 1022/99, requires that domestic violence incident reports shall be provided to victims free of charge and on a timely basis. Such duties for local law enforcement agencies are clearly mandatory.

In addition, the [above] mandatory services are to be provided to a large class of domestic violence victims[1]. Members of this class are those persons defined in Family Code section 6211:

""Domestic violence" is abuse perpetrated against any of the following persons:

(a) A spouse or former spouse.

(b) A cohabitant or former cohabitant, as defined in Section 6209.

[1] According to Nick Warner of the California State Sheriff's Association, in a June 14, 1999 letter to Gloria Romero, author of AB 403 [Chapter 1022/99] [attached in Tab 7], 220,000 domestic violence calls occurred statewide in 1997 [page 2].

(c) A person with whom the respondent is having or has had a dating or engagement relationship.

(d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3(commencing with Section 7600) of Division 12).

(e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(f) Any other person related by consanguinity or affinity within the second degree."

Domestic violence incident reports must be prepared and be available to domestic violence victims for five years in accordance with Family Code subsection 6228(e) [above] and in accordance with Penal Code section 13730, as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995, requiring that:

"(a) Each law enforcement agency shall develop a system, by January 1, 1986,for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence- related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General. [Emphasis added.]

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim."

As noted in the attached declaration [in Tab 1] of Bernice K. Abrams of the Los Angeles County Sheriff's Department, approximately 4,740 of the [above] mandated domestic violence reports for incidents occurring from January 1, 2000 through June 30, 2000 will be prepared by the Los Angeles County Sheriff's Department. On average, each domestic violence incident report requires 30 minutes to prepare, 10 minutes to store [for five years], and 15 minutes to retrieve and copy as requested by domestic violence victims.

Legislative Intent

In adding section 6228 to the Family Code in Chapter 1022, Statutes of 1999, the Legislature recognized that domestic violence victims need their incident reports when requested and that local law enforcement agencies must provide them promptly and at no cost to the victims. Regarding the new duties and costs imposed on local law enforcement in performing this new victim service, the Legislative Counsel, in their digest to Chapter 1022, Statutes of 1999, attached in Tab 4, stated, in pertinent part, that:

"Existing law establishes procedures for the prevention of domestic violence and provides both civil and criminal sanctions for acts of domestic violence.

This bill would require each state and local law enforcement agency to provide, without imposing a fee, one copy of any domestic violence incident report face sheet, domestic violence incident report, or both, upon request, to a victim of domestic violence within a specified amount of time, thereby imposing a state-mandated local program.

- - -

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000."

The Legislature also recognized the lost revenue to local law enforcement agencies when fees for domestic violence incident reports could not be charged victims. In particular, The Appropriations Committee's Summary for Assembly Bill 403 [Chapter 1022, Statutes of 1999] for the September 1, 1999 hearing, found in Tab 8, states that:

"... [T]here are unknown lost revenues since agencies currently charge a fee of $5 - $15 per report. The lost revenues are probably reimbursable. According to the Department of Justice's "Crime and Delinquency in California, 1997" report, there were about 220,000 domestic violence calls made to law enforcement agencies in 1997. For illustrative purposes, for every 10% of victims that request a free copy of the report, lost revenues could be $220,000 annually."

In addition, an earlier The Appropriations Committee's Summary for Assembly Bill 403 [Chapter 1022, Statutes of 1999] for the August 16, 1999 hearing, found in Tab 9, states that:

> "Unknown increased mandated, potentially reimbursable [costs], probably in excess of $150,000 annually and potentially significant would be imposed."
>
> "[T]he [California State Sheriff's] Association estimates increased costs of $2.3 million annually in overtime alone since they believe they would have to implement a policy of completing all domestic violence reports within 2 days, regardless of whether or not a copy of the report is requested, in order to comply with the provisions of the bill. In addition, there are unknown lost revenues to law enforcement agencies for providing the copy free of charge."

The Assembly Committee on Appropriations report on AB 403 for the April 21, 1999 hearing [attached in Tab 10] also recognized that costs would be imposed on local law enforcement agencies to provide a free copy of the requested reports and that such a program was a "reimbursable" "State mandated local program".

Therefore, the Legislature clearly recognized the need to provide free domestic violence incident reports to victims and also recognized various costs thereby imposed on local law enforcement agencies to accomplish this end.

State Funding Disclaimers are Not Applicable

There are seven disclaimers specified in Government Code (GC) Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in GC Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of GC Section 17556.

> (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution

from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph."

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

(b) "The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts."

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) "The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation."

(c) is not applicable as no federal law or regulation is implemented in the subject law.

(d) "The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service."

(d) is not applicable as there is no authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service. Indeed, as previously discussed, the imposition of a fee is specifically prohibited.

(e) "The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net

costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate."

(e) is not applicable as no offsetting savings are provided in the subject law.

(f) "The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election."

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) "The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction.

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs mandated by the state as claimed herein for the preparation and provision of domestic violence incident reports to victims of domestic violence.

Reimbursable Domestic Violence Incident Reporting

It should be noted that domestic violence incident reporting pursuant to Penal Code section 13730, as added by Chapter 1609, Statutes of 1984, has been found to be reimbursable. According to the State Controller's Office instructions for claiming reimbursement for [Chapter 1609/84] activities [attached in Tab 11], local law enforcement agencies are entitled to recover their costs for report

preparation. In this regard, on page 2, the instructions indicate that reimbursement will be provided for:

"(3) Completing Domestic Violence Incident Reports

Costs of writing mandated reports that include domestic violence reports, incident, or crime reports directly related to the domestic violence incident. "

Also, domestic violence incident reporting set forth in Penal Code section 13730, as amended by Chapter 965, Statutes of 1995, has been found to be reimbursable. The Commission on State Mandates [Commission] staff recommended the following on-going reimbursable activities in their Parameters and Guidelines developed on April 9, 1999 [attached in Tab 12], on pages 7-8:

"1. Obtaining report information through preliminary investigation and determinations regarding

a. signs that the alleged abuser was under the influence of alcohol or a controlled substance, and

b. the number of prior responses by any law enforcement to a domestic violence call at the same address involving the alleged abuser or victim

to the extent this activity is not claimed under the *Domestic Violence Arrest Policies* program (Statutes of 1995, Chapter 246).

2. Retrieving information to report the number of prior responses by any law enforcement agency to a domestic violence call at the same address involving the same alleged abuser or victim.

3. Notating and recording the following information on domestic violence incident reports:

(a) Signs that the alleged abuser was under the influence of alcohol or a controlled substance, and

(b) The number of prior responses by any law enforcement to a domestic violence call at the same address involving the alleged abuser or victim."

The preparation of domestic violence incident reports is necessary to implement Penal Code section 13730 reports. This type of report preparation is also necessary to implement Family Code section 6228. There are, then, two reasons to prepare reports. In effect, there are two mandates. Discontinuing one program, leaves the other unaffected. If, for example, implementation of Penal Code section 13730 is suspended or made optional, report preparation would still be mandated in order to implement Family Code section 6228.

The Crime Victims' Report Preparation Mandate

In addition to the basis for reimbursement of domestic violence incident report preparation pursuant to implementing Penal Code section 13730, there now is another basis for finding domestic violence incident report preparation reimbursable. Under Family Code section 6228, report preparation is required for victims', not the Attorney General's, use.

If the acknowledged mandate to prepare domestic violence reports for the Attorney General's use is suspended or made optional, the mandate to prepare such reports for victims remains. And such reports must be prepared for victims if victims are to be provided a copy as specified in Family Code section 6228. While not explicitly stated in Family Code section 6228, this obvious prerequisite duty, to prepare a report before copying it, is an implied mandate.

Otherwise, victims would be requesting non-existent reports - precisely the result the Legislature intended to avoid in the subject law.

Therefore, the duty to prepare domestic violence incident reports under Chapter 1022, Statutes of 1999 is an implied mandate; and, it is different from the mandate

to prepare reports for the Attorney General. The victims' mandate remains mandatory and is subject to reimbursement as claimed herein - even when report preparation for the Attorney General, required under Chapter 1609/84, is suspended or made optional by the Legislature.

An example of an implied mandate, such as the report preparation mandate for victims, found to impose reimbursable "costs mandated by the State" as defined in Government Code section 17514, is the implied mandate for local law enforcement agencies to provide information to hospitals. Under the Rape Victim Counseling Center Notices Program [Chapters 999/91 and 224/92], a claimant is reimbursed for explicit as well as implied mandates. In particular, Chapter 224/92 amends Penal Code section 264.2(b), with explicit local government mandates in section 264.2(b)(1) and implied ones in section 264.2(b)(2) as follows:

> "(b)(1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288(a), or 289 is transported to a hospital for examination, and the victim approves of that notification.
> ....
>
> (b)(2) The hospital may verify with the local law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon approval of the victim." [Emphasis added]

As noted on pages 1 and 3 of the State Controller's Office claiming instructions [attached in Tab 13] for the Rape Victim Counseling Center Notices Program [Chapters 999/91 and 224/92], both the explicit local government mandates to "notify the victim selected center" in (b)(1) [above] and the implied local government mandates to "verify whether the local rape victim counseling center has been notified" as requested by hospitals in (b)(2) [above] are reimbursable.

Along with the new rights given hospitals to obtain specified information, corresponding obligations on local law enforcement agencies to provide the information were created. Without such obligations or implied mandates, the

legislatures' provision for new hospital rights would be frustrated... just as the Legislature's provision for new victim rights would be frustrated here.

The domestic violence victims' rights to obtain their incident report necessarily implies a mandate on local government to prepare such reports. Without such an implied mandate, the Legislature's purpose of providing a uniform and reliable system for obtaining victims' reports could not be realized. Victims could be asking for non-existent reports as report preparation would be viewed as optional.

Therefore, preparing domestic violence incident reports as well as storing, retrieving and copying them as requested by domestic violence victims pursuant to implementing Family Code section 6228, added by Chapter 1022/99, encompasses a new State-mandated program for local law enforcement.

The New Crime Victims' Domestic Violence Incident Reports Program is Reimbursable

Counties have unavoidably incurred costs in preparing, storing, retrieving, and copying domestic violence incident reports pursuant to implementing Family Code section 6228, added by Chapter 1022/99. Such county costs are reimbursable as "costs mandated by the State" as there is no bar or disclaimer to such a finding, as previously discussed, and because such costs satisfy three requirements, found in Government Code Section 17514:

1. There are "increased costs which a local agency is required to incur after July 1, 1980"; and

2. The costs are incurred "as a result of any statute enacted on or after January 1, 1975"; and

3. The costs are the result of "a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution".

All three of above requirements for finding "costs mandated by the State" are met herein.

The first two requirements are met. First, local government began incurring costs for (the subject) program as a result of Chapter 1022, Statutes of 1999, and incurred such costs well after July 1, 1980. Second, Chapter 1022, Statutes of 1999 was enacted on October 10, 1999, well after January 1, 1975.

The third requirement is also met. The subject law imposed new requirements as described in the attached declaration [in Tab 1] of Bernice K. Abrams of the Los Angeles County Sheriff's Department.

According to Ms. Abrams, approximately 4,740 domestic violence reports for incidents occurring from January 1, 2000 through June 30, 2000 will be prepared by the Los Angeles County Sheriff's Department and will be available to domestic violence victims. On average, each domestic violence incident report requires 30 minutes to prepare, 10 minutes to store [for five years], and 15 minutes to retrieve and copy as requested by domestic violence victims.

For the period January 1, 2000 through June 30, 2000, Los Angeles County's costs to perform the [above] services are estimated to be $181,228 and are detailed in a declaration of Sharon R. Bunn of the Los Angeles County Sheriff's Department, attached in Tab 2.

Therefore, the County's crime victims' domestic violence incident reports service costs are reimbursable "costs mandated by the State" and should be paid as detailed and claimed herein.

Government Code Section 17581 Funding Disclaimer is Not Applicable

Under the provisions of Government Code section 17581[2], allowing the Legislature to "suspend" reimbursable mandated programs on an annual basis, local law enforcement agencies are not mandated to prepare Chapter 1609/84 reports for the Attorney General during the 1999-2000 fiscal year. This domestic

---

[2] Government Code section 17581 deals with "[i]mplementation by local agencies of statutes or executive orders requiring state reimbursement" and provides that:

"(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 and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent 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 the 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.

(c) This section shall not apply to any state-mandated local program for the trial courts, as specified in Section 77203.

(d) This section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution."

violence incident reporting duty is "optional", unlike the new mandatory reporting for crime victims claimed herein.

In particular, Chapter 1022/99, imposing the duties to prepare and provide crime victims' domestic violence incident reports was not made "optional" in the 1999-2000 State Budget Act [Chapter 50, Statutes of 1999], attached in pertinent part in Tab 14, which on pages 932, 933, specifically identified "Domestic Violence Information (Ch. 1609, Stats. 1984)" "... for suspension during the 1999-00 fiscal year".

Of course, Chapter 1022/99 can not be "suspended" or made optional under Government Code section 17581 because the victim duties imposed on local law enforcement agencies must first be found to impose reimbursable "costs mandated by the State" in accordance with Government Code section 17581(a)(1) requiring that:

> "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." [Emphasis added.]

If the new mandate in Chapter 1022, Statutes of 1999, to prepare and provide crime victims' domestic violence incident reports, were viewed as one and the same as the prior mandate to prepare domestic violence incident reports in Chapter 1609, Statutes of 1984, then, suspending or making optional the Chapter 1609/84 mandate would also make optional the Chapter 1022/99 one. Under this assumption — the duty to prepare victims' reports would be optional and reimbursable costs mandated by the State could not be found. But this assumption, that report preparation mandates in Chapter 1609/84 and those in Chapter 1022/99 are the same, is erroneous for the following reasons.

The Chapter 1609/84 and the Chapter 1022/99 Programs are Not the Same

The statutory scheme for domestic violence report preparation [set forth in Chapter 1022, Statutes of 1999], for victims is different than that for the Attorney General [set forth in Penal Code section 13730 as added by Chapter 1609/84]. As

previously discussed, victim reports must be prepared, stored for up to five years, retrieved, copied and provided to victims. However, the statutory scheme embodied in Penal Code section 13730 as added by Chapter 1609/84 does not address reports for victims. Indeed, Chapter 1609/84 had a different purpose: reporting domestic violence incident information to the Attorney General. References to the Attorney General, not victims, are found in Penal Code section 13730 as added by Chapter 1609/84:

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986,for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence- related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General. [Emphasis added.]
>
> (b)The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county. [Emphasis added.]
>
> 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."

Therefore, the victim mandates and the Attorney General's mandates are not one and the same, "suspension" of the Attorney General's program does not entail suspension of the other because the programs are not the same. Consider the following differences.

Program Differences

Comparing the provisions of reports for the Attorney General [Chapter 1609/84] with those for victims [Chapter 1609/84], the following difference are noted:

1. Chapter 1609/84 does not require that a copy of the domestic violence incident report be given the victim. Under Chapter 1022/99 it does.

2. Chapter 1609/84 requires copies to be given the Attorney General. Chapter 1022/99 does not.

3. Chapter 1609/84 does not require that fees be waived for a copy of the domestic violence incident report. Chapter 1022/99 does.

4. Government Code section 17581(b) permits local law enforcement to continue to fund domestic violence incident report preparation pursuant to Chapter 1609/84 when it is deemed "optional" by charging the user [Attorney General] a fee. Under Chapter 1022/99 the [section 17581(b)] user [victim] fee authority is revoked.

5. Government Code section 17581(a) permits local law enforcement to stop preparing domestic violence incident report preparation pursuant to Chapter 1609/84 if deemed "optional" on a year- to-year basis. Under Chapter 1022/99 a Government Code section 17581(a) "optional" report preparation status would be in direct conflict with the Legislature's express intent in Chapter 1022/99 to prepare and provide all reports as requested during a five year retention period.

6. The particular form and content of a domestic violence incident report, specified in Penal Code section 13730, is not referenced in Chapter 1022/99. Presumably, a victim would not have to be provided with a section 13730 report but only with a "domestic violence incident report", which could vary from jurisdiction to jurisdiction.

Therefore, the duty to prepare and provide domestic violence incident reports in Chapter 1022/99 cannot be considered "optional" even if the duty to prepare domestic violence incident reports is optional. Otherwise, domestic violence incident reporting could vary throughout the State. There would be no uniform and reliable method to assure victims that their reports would be available when they needed them --- precisely the result Chapter 1022/99 was designed to avoid.

Chapter 1022/99 is not Revoked in the 1999-2000 State Budget Act

Even assuming the untenable position, that the domestic violence incident reporting made optional in the 1999-2000 was the same as the duty claimed herein, such mandated duty in Chapter 1022/99 is still not made optional. Here the same duty would be included a later enacted statutes on the same subject. In this case, the holding in People v. Bustamente (57 Cal.App.4th 693), attached in Tab 15, is dispositive.

According to Bustamente, on page 701, in a situation "[w]here two laws on the same subject, passed at different times, are inconsistent with each other, the latter act prevails". The latter act is Chapter 1022, Statutes of 1999, enacted on October 10, 1999. It requires, without exception, that victims' domestic violence incident reports be prepared. The prior act is Chapter 50, Statutes of 1999 [the 1999-2000 State Budget Act], enacted on June 29, 1999, which leaves it to the discretion of each local jurisdiction as to whether domestic violence incident reports will be prepared.

Therefore, under Bustamante, the later enacted Chapter 1022, Statutes of 1999, mandating the preparation of victims' domestic violence incident reports, prevails over the prior "optional" designation for the same activity in the 1999-2000 State Budget Act.

It should further be noted that the reporting duties in Chapter 1022, Statutes of 1999 are long term in nature, not subject to being made optional in one year and mandated in the next. Specifically, Chapter 1022, Statutes of 1999 requires, in Family Code section 6228(e) that domestic violence incident reports be available to victims for "five years from the date of completion of the domestic violence incident report". Therefore, Chapter 1022/99 did not impose an "optional" or temporary program, but a mandatory and permanent one.

Substantive Law has Remained Mandatory

The substantive law and language in Penal Code section 13730 has remained mandatory. Permissive language, indicating that local law enforcement agencies may, but need not, prepare domestic violence incident reports has never been introduced into Penal Code section 13730.

The mandatory domestic violence incident report preparation duties, in Penal Code section 13730, has not been relaxed to permit local law enforcement agencies to discontinue reporting. To the contrary, the language there still uses the mandatory "shall". For example, Penal Code section 13730 (c) mandates, in pertinent part that "[I]n all incidents of domestic violence a report shall be written ...".

The Legislature never changed the substantive law requiring domestic violence incident report preparation. The substantive law still says that reports "shall" be prepared. In contrast, the 1999-2000 State Budget Act says that [under the provisions of Government Code section 17581] reports shall not have to be prepared. This legal paradox is currently under study by the California Supreme Court in Carmel Valley Fire Protection District v. State of California 83 CalRptr.2d 466, attached in Tab 16 .

In the case of Carmel Valley Fire Protection, the [Second District] Appellate Court held, on page 470, that:

> "... section 17581 is nothing more than an impermissible attempt to exercise supervisorial control over the manner in which the Department of Industrial Relations executes the laws enacted by the Legislature. Whatever power the Legislature might have to repeal Cal/OSHA in whole or in part, or to enact an inconsistent statute that would accomplish an implied repeal of the Executive Orders, it does not have the power to cherry-pick the programs to be suspended - which is precisely what the Legislature has done by suspending the operation of only those "executive order[s], or portion[s] thereof, [that] ha[ve] been specifically identified by the Legislature in the Budget act for the fiscal year as being [those] for

which reimbursement is not provided for that fiscal year." (s 17581, subd. (a)(2).)" [Emphasis added.]

Therefore, the validity of Government Code section 17581 in making domestic violence incident report preparation, mandated in Penal Code section 13730, as added by Chapter 1609/84 and amended by Chapter 965/95, "optional" is suspect.

In addition, here, under Chapter 1022/99, the case for finding that Government Code section 17581 did not effect an implied repeal of substantive law, requiring the provision of crime victims' domestic violence incident reports, is even more compelling than under prior law. When Chapter 1022, Statutes of 1999 was passed, not preparing domestic violence reports was no longer an option --- even if considered optional under prior law. Now, as previously discussed, the substantive law in Family Code section 6228 clearly requires the preparation of domestic violence incident reports. The prior mandate was, so-to-speak, reenacted and incorporated[3] in the new program of providing domestic violence reports to victims. Without such reenactment and incorporation, the Legislature would have merely established a State mandated local program which provided a victim with a copy of his or her report only if prepared. But this was not the Legislature's purpose here.

Chapter 1022/99's Purpose: Expedited Victim Reporting

In determining the Legislature's purpose in Chapter 1022/99, the case of Santa Barbara County Taxpayers Association v County of Santa Barbara 194 Cal.App.3d 674, 677 [attached in Tab 17]is instructive. According to Santa Barbara:

[3] It should be noted that Penal Code section 13730 as added by Chapter 1609/84 and amended by Chapter 965/95 sets forth particular requirements for the form and content of domestic violence incident reports. Family Code section 6228 as added by Chapter 1022/99 merely refers to "domestic violence incident reports", not Penal Code section 13730 or the particular report requirements set forth therein.. Therefore, even if the substantive law in Penal Code section 13730, absolutely requiring the preparation of a specific type of domestic violence incident report, were to be no longer required under the provisions of Government Code section 17581, then some type of domestic violence incident report would have to be prepared by the local jurisdiction to provide to victims as specified in Chapter 1022/99.

> "[O]ne ferrets out the legislative purpose of a statute by considering its objective, the evils which it is designed to prevent, the character and context of the legislation in which the particular words appear, the public policy enunciated and vindicated, the social history which attends it, and the effect of the particular language on the entire statutory scheme". [Emphasis added.]

The Legislature's objective in Chapter 1022/99 was to expedite, not relax or make "optional", domestic violence incident report preparation.

The provisions of Family Code subsections 6228(b) and 6228(c), as added by Chapter 1022/99, impose explicit deadlines for the provision of domestic violence incident reports to victims:

> "(b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made. [Emphasis added.]
>
> (c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made." [Emphasis added.]

Therefore, domestic violence incident reports must be prepared and provided to victims within strict time limits. There is no provision allowing local law enforcement agencies to exceed time limits or allowing local agencies not to

prepare a report at all. Indeed, this was the evil which Chapter 1022/99 was designed to prevent.

As noted by Tracey Jensen, of the Family Law Section of the State Bar of California, in a March 4, 1999 letter about AB 403 [Chapter 1022/99] to Larry Doyle, Chief Legislative Counsel [attached in Tab 18] on page 2:

> "Law enforcement reports involving domestic violence are of great import to a victim seeking civil and/or criminal sanctions against the perpetrator. Such reports are also used by victims seeking citizenship through the federal Violence Against Women Act and compensation and other services through California's Victim-Witness program. Domestic violence survivors would receive such reports [under Chapter 1022/99] at no cost and within a reasonable period of time whereas now they must obtain the reports on their own and pay any associated costs. Domestic violence survivors fleeing abuse should not have to incur the cost and inconvenience of obtaining such reports."

The public policy of expediting victims' reports so that "[d]omestic violence survivors fleeing abuse should not have to incur the cost and inconvenience of obtaining such reports" [quoted above] found clear expression in Family Code section 6228. For example, section 6228(a) provides in pertinent part that "... local law enforcement agencies shall provide, without charging a fee, one copy of all incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request."

In addition, these reports need not be requested right away by victims --- but need to be available at the convenience of victims for five years "from the date of completion of the domestic violence incident report" [Family Code section 6228(e)]. Law enforcement agencies have no way of knowing which victims will eventually request their reports or when they will do so. Accordingly, reports for all victims must be promptly prepared and be available to all victims for five years.

Therefore, in sum, the implementation of Chapter 1022/99 requires the uniform and reliable enforcement of domestic violence victims' rights to promptly obtain a free copy of their domestic violence incident reports and also requires reimbursement to local law enforcement agencies for the resulting costs of preparing, storing, retrieving, and copying these reports, as claimed herein.

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

LEROY D. BACA, SHERIFF

County of Los Angeles Test Claim
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

Declaration of Bernice Abram

Bernice Abram makes the following declaration and statement under oath:

I, Bernice Abram, Sergeant, and Family Violence Specialist, Sheriff's Department, County of Los Angeles, am responsible for developing and implementing methods and procedures to comply with new State-mandated requirements in responding to and reporting domestic violence incidents, including requirements imposed under the subject law.

In particular, I declare that domestic violence incident reports must be provided to domestic violence victims in accordance with Family Code section 6228, as added by Chapter 1022, Statutes of 1999, which requires that:

> (a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.
>
> (b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence

incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

(d) Persons requesting copies under this section shall present state or local law enforcement with identification at the time a request is made.

(e) This section shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incidence report.

I declare that domestic violence victims are those persons defined in Family Code section 6211 as follows:

Domestic violence" is abuse perpetrated against any of the following persons:

(a) A spouse or former spouse.

(b) A cohabitant or former cohabitant, as defined in Section 6209.

(c) A person with whom the respondent is having or has had a dating or engagement relationship.

(d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(f) Any other person related by consanguinity or affinity within the second degree.

I declare that domestic violence incident reports must be prepared and available to domestic violence victims for five years in accordance with Family Code subsection 6228(e) [above] and in accordance with Penal Code section 13730, as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995, requiring that:

Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had

previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

It is my information or belief that under the subject law, an estimated 4,740 domestic violence reports for incidents occurring from January 1, 2000 through June 30, 2000, will be prepared by the Los Angeles County Sheriff's Department.

It is my information or belief that, on average, each domestic violence incident report requires 30 minutes to prepare, 10 minutes to store, and 15 minutes to retrieve and copy as requested by domestic violence victims.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and to those matters, I believe them to be true.

04-26-00 Los Angeles, CA
Date and Place

Signature

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

LEROY D. BACA, SHERIFF

County of Los Angeles Test Claim
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

Declaration of Sharon R. Bunn

Sharon R. Bunn makes the following declaration and statement under oath:

I, Sharon R. Bunn, Division Director, Office of Administrative Services, Sheriff's Department, County of Los Angeles, am responsible for fiscal management and administration, including recovering County costs incurred in performing State-mandated programs, and for determining State-mandated County costs unavoidable resulting from the subject law [Penal Code Section 13730 as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995 and Family Code Section 6228 as added by Chapter 1022, Statutes of 1999].

Specifically, I declare that I have examined the County's costs in preparing and providing domestic violence incident reports in accordance with the subject law, including Family Code section 6228, as added by Chapter 1022, Statutes of 1999, which requires that:

> (a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.
>
> (b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of

domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

(d) Persons requesting copies under this section shall present state or local law enforcement with identification at the time a request is made.

(e) This section shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incidence report.

I declare that domestic violence victims, entitled to free domestic violence incident reports, are those persons defined in Family Code section 6211 as follows:

Domestic violence" is abuse perpetrated against any of the following persons:

(a) A spouse or former spouse.

(b) A cohabitant or former cohabitant, as defined in Section 6209.

(c) A person with whom the respondent is having or has had a dating or engagement relationship.

(d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under

the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(f) Any other person related by consanguinity or affinity within the second degree.

I declare that domestic violence incident reports must be prepared and available to domestic violence victims for five years in accordance with Family Code subsection 6228(e) [above] and in accordance with Penal Code section 13730, as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995, requiring that:

(a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

It is my information or belief, in accordance with the declaration of Bernice Abram, that, under the subject law, an estimated 4,740 domestic violence reports for incidents occurring from January 1, 2000 through June 30, 2000, will be prepared by the Los Angeles County Sheriff's Department and that on average, each domestic violence incident report requires 30 minutes to prepare, 10 minutes to store, and 15 minutes to retrieve and copy as requested by domestic violence victims.

I declare that the County's costs in preparing, storing, retrieving and copying the subject domestic violence incident reports, as illustrated in the attached Schedule 1, are fairly stated, true and correct.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and to those matters, I believe them to be true.

5/2/00 Monterey Park, CA
Date and Place

Signature

Schedule 1
Crime Victims' Domestic Violence Incident Reports
January 1, 2000 - June 30, 2000

	Number of Reports	Average Time [hours]	Productive Hourly Rates	Component Costs
Prepare Reports	4,740	0.500	$62.84	$148,931
Store Reports	4,740	0.167	$31.40	$24,856
atrieve/Copy Reports	948	0.250	$31.40	$7,442
Total				$181,228

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

MICHAEL L. GALINDO
ACTING AUDITOR-CONTROLLER

County of Los Angeles Test Claim
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims , reviews of State agency comments, Commission staff analyses, and for proposing parameters and guidelines (Ps&Gs) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

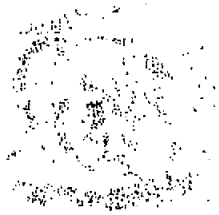
> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

5/11/00, Los Angeles, CA
Date and Place

Leonard Kaye
Signature



CHAPTER 1022

(Assembly Bill No. 403)

An act to add Section 6228 to the Family Code, relating to law enforcement, and making an appropriation therefor.

[Approved by Governor October 10, 1999. Filed with Secretary of State October 10, 1999.]

To the Members of the Assembly:

I am signing Assembly Bill No. 403; however, I am deleting the $200,000 General Fund appropriation contained in Section 1.5.

AB 403 would appropriate $200,000 from the General Fund to the Department of Justice (DOJ) for training local law enforcement on the enforcement of firearm laws at gun shows.

Having recently signed legislation tightening regulation of gun shows, I support the need for additional training. However, primary responsibility of law enforcement at gun shows is a local responsibility, and I believe the Commission on Peace Officers Standards and Training is the appropriate state agency to provide training for local law enforcement officers.

If the Commission desires to contract with the Department of Justice to provide such training, I will provide the necessary funding in the budget process.

This bill would also require local law enforcement agencies to make available to a victim one copy of domestic violence incident report within a specific period of time.

I believe this is an important measure that will help victims of domestic violence obtain the documentation they need to secure restraining orders as quickly as possible.

Sincerely,
Gray Davis, Governor

LEGISLATIVE COUNSEL'S DIGEST

AB 403, Romero. Law enforcement: domestic violence.

Existing law establishes procedures for the prevention of domestic violence and provides both civil and criminal sanctions for acts of domestic violence.

This bill would require each state and local law enforcement agency to provide, without imposing a fee, one copy of any domestic violence incident report face sheet, domestic violence incident report, or both, upon request, to a victim of domestic violence within a specified amount of time, thereby imposing a state-mandated local program.

The bill would also appropriate $200,000 from the General Fund to the Department of Justice for training local law enforcement on the enforcement of firearms laws at gun shows.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Appropriation: yes.

Italics indicate changes or additions. * * * indicate omissions.

The people of the State of California do enact as follows:

SECTION 1. Section 6228 is added to the Family Code, to read:

§ 6228. (a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.

(b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

(d) Persons requesting copies under this section shall present state or local law enforcement with identification at the time a request is made.

(e) This section shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incidence report.

(f) This section shall be known, and may be cited, as the Access to Domestic Violence Reports Act of 1999.

SEC. 1.5. There is hereby appropriated from the General Fund to the Department of Justice the sum of two hundred thousand dollars ($200,000) for the training of local law enforcement agencies on the enforcement of firearms laws at gun shows.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 965

(Senate Bill No. 132)

An act to amend Sections 13519 and 13730 of the Penal Code, relating to domestic violence.

[Approved by Governor October 16, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 132, Watson. Domestic violence.

(1) Under existing law, the Commission on Peace Officer Standards and Training is required to implement a course or courses of instruction for the training of law enforcement officers in the handling of domestic violence complaints. The course of instruction is required to be developed by the commission in consultation with specified groups and individuals.

This bill would require each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence to complete, every 2 years, an updated course of instruction on domestic violence. This instruction would be funded from existing resources.

Existing law requires each law enforcement agency to develop an incident report form that includes a domestic violence identification code and requires a report to be written in all incidents of domestic violence.

This bill would specify certain information to be included in a domestic violence incident report.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would impose a state-mandated local program by imposing new duties on peace officers.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 13519 of the Penal Code is amended to read:

§ 13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence,

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including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, any peace officer of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, any peace officer of the University of California Police Department, as defined in subdivision (c) of Section 830.2, any peace officer of the California State University Police Departments, as defined in subdivision (d) of Section 830.2, or a peace officer, as defined in subdivision (d) of Section 830.31.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, reportwriting, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 6 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) (1) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission.

(2) Except as provided in paragraph (3), the training specified in paragraph (1) shall be completed no later than January 1, 1989.

(3) (A) The training for peace officers of the Department of Parks and Recreation, as defined in subdivision (g) of Section 830.2, shall be completed no later than January 1, 1992.

(B) The training for peace officers of the University of California Police Department and the California State University Police Departments, as defined in Section 830.2, shall be completed no later than January 1, 1993.

(C) The training for peace officers employed by a housing authority, as defined in subdivision (d) of Section 830.31, shall be completed no later than January 1, 1995.

(4) Local law enforcement agencies are encouraged to include, as a part of their

advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but shall not be limited to, the following: one representative each from the California Peace Officers' Association, the Peace Officers' Research Association of California, the State Bar of California, the California Women Lawyers' Association, and the State Commission on the Status of Women; two representatives from the commission; two representatives from the California Alliance Against Domestic Violence; two peace officers, recommended by the commission, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Alliance Against Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence. At least one of the persons selected shall be a former victim of domestic violence.

The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) ***Each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d). The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government entities.***

SEC. 2. Section 13730 of the Penal Code is amended to read:

§ 13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

(c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be * * * identified on the face of the report as a domestic violence incident. *A report shall include at least both of the following:*

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

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SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

EXPLANATORY NOTES SENATE BILL 132:

Pen C § 13519. (1) Added subdivision designation (c)(4); and (2) substituted subd (e) for former subd (e) which read: "(e) Forty thousand dollars ($.40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120–001–268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts."

Pen C § 13730. Amended subd subd (c) by (1) deleting "thus" after "and shall be" in the second sentence; and (2) adding the last sentence.

CHAPTER 1609

An act to add Section 13519 to, and to add and repeal Title 5 commencing with Section 13700) to Part 4 of, the Penal Code, relating to training of peace officers, and making an appropriation therefor.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that:

(a) A significant number of homicides, aggravated assaults, and assaults and batteries occur within the home between adult members of families. Research shows that 35 to 40 percent of all assaults are related to domestic violence.

(b) The reported incidence of domestic violence represents only a portion of the total number of incidents of domestic violence.

(c) Twenty-three percent of the deaths of law enforcement officers in the line of duty results from intervention by law enforcement officers in incidents of domestic violence.

(d) Domestic violence is a complex problem affecting families from all social and economic backgrounds.

The purpose of this act is to address domestic violence as a serious crime against society and to assure the victims of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. It is the intent of the Legislature that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be tolerated. It is not the intent of the Legislature to remove a peace officer's individual discretion where that discretion is necessary, nor is it the intent of the Legislature to hold individual peace officers liable.

SEC. 2. Section 13519 is added to the Penal Code, to read:

13519. (a) The commission shall implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also shall develop guidelines for law enforcement response to domestic violence. The course or courses of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training.

As used in this section, "law enforcement officer" means any

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officer or employee of a local police department or sheriff's office.

(b) The course of basic training for law enforcement officers shall, no later than January 1, 1986, include adequate instruction in the procedures and techniques described below:

(1) The provisions set forth in Title 5 (commencing with Section 13700) relating to response, enforcement of court orders, and data collection.

(2) The legal duties imposed on police officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.

(3) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.

(4) The nature and extent of domestic violence.

(5) The legal rights of, and remedies available to, victims of domestic violence.

(6) The use of an arrest by a private person in a domestic violence situation.

(7) Documentation, report writing, and evidence collection.

(8) Domestic violence diversion as provided in Chapter 2.6 (commencing with Section 1000.6) of Title 5 of Part 2.

(9) Tenancy issues and domestic violence.

(10) The impact on children of law enforcement intervention in domestic violence.

(11) The services and facilities available to victims and batterers.

(12) The use and applications of this code in domestic violence situations.

(13) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.

(14) Verification and enforcement of stay-away orders.

(15) Cite and release policies.

(16) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

The guidelines developed by the commission shall also incorporate the foregoing factors.

(c) All law enforcement officers who have received their basic training before January 1, 1986, shall participate in supplementary training on domestic violence subjects, as prescribed and certified by the commission. This training shall be completed no later than January 1, 1989.

Local law enforcement agencies are encouraged to include, as part of their advanced officer training program, periodic updates and training on domestic violence. The commission shall assist where possible.

(d) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. The groups and individuals shall include, but

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The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs.

(e) Forty thousand dollars ($40,000) is appropriated from the Peace Officers Training Fund in augmentation of Item 8120-001-268 of the Budget Act of 1984, to support the travel, per diem, and associated costs for convening the necessary experts.

SEC. 3. Title 5 (commencing with Section 13700) is added to Part 4 of the Penal Code, to read:

TITLE 5. LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

CHAPTER 1. GENERAL PROVISIONS

13700. As used in this title:

(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, or another.

(b) "Domestic Violence" is abuse committed against an adult or fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or a person with whom the suspect has had a child or has or has had a dating or engagement relationship.

(c) "Officer" means any law enforcement officer employed by a local police department or sheriff's office, consistent with Section 830.1.

(d) "Victim" means a person who is a victim of domestic violence.

13701. Every law enforcement agency in the 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:

(a) Felony arrests.

(b) Misdemeanor arrests.

(c) Use of citizen arrests.

(d) Verification and enforcement of temporary restraining orders when (1) the suspect is present and (2) when the suspect has fled.

(e) Verification and enforcement of stay-away orders.

(f) Cite and release policies.

(g) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.

(h) Writing of reports.

(i) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.

In the development of these policies, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.

CHAPTER 2. RESTRAINING ORDERS

13710. Law enforcement agencies shall maintain a complete and systematic record of all protection orders with respect to domestic violence incidents, restraining orders, and proofs of service in effect. This shall be used to inform law enforcement officers responding to domestic violence calls of the existence, terms, and effective dates of protection orders in effect.

CHAPTER 3. STAY-AWAY ORDERS

13720. A stay-away order may be issued by the court in a criminal case involving domestic violence where, with notice to the defendant and upon an affidavit, a likelihood of harassment of the victim by the defendant has been demonstrated to the satisfaction of the court. Such an order may remain in effect as long as the suspect is under the court's jurisdiction, including any sentence or probationary period.

CHAPTER 4. DATA COLLECTION

13730. (a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be

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compiled by each law enforcement agency and submitted to the Attorney General.

(b) The Attorney General shall report annually to the Governor, the Legislature, and the public, the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

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

CHAPTER 5. TERMINATION

13731. This title shall remain in effect only until January 1, 1991, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1991, deletes or extends that date.

SEC. 4. The sum of twenty-five thousand dollars ($25,000) is hereby appropriated from the General Fund to the Department of Justice for the purposes of Section 13730 of the Penal Code.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

CHAPTER 1610

An act to add Section 14132.6 to the Welfare and Institutions Code, relating to mastectomy.

[Approved by Governor September 29, 1984. Filed with Secretary of State September 30, 1984.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that breast reconstruction incident to mastectomy is not cosmetic surgery. It is surgical restoration of a part of the body that has been lost through severe illness by no fault of the patient, and restoration shall, therefore, be considered part of the original mastectomy surgery.

SEC. 2. Section 14132.6 is added to the Welfare and Institutions Code, to read:

14132.6. External prostheses constructed of silicon or other

JUN 25 1999

California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

June 24, 1999

The Honorable Gloria Romero
Member of the Assembly
2117 Capitol Building
Sacramento, CA 95814

Subject: AB 403 – Oppose as amended in Senate Public Safety Committee

Dear Assembly Member Romero:

On behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that, in light of the amendments to your SB 403 in the Senate Public Safety Committee, we have changed our position from support if amended to oppose as amended. Although we agree with you that it is appropriate and necessary to provide domestic violence reports to victims, the timeframes set forth in this bill will be detrimental to the public safety and overly costly to law enforcement.

As you may know, CSSA and other law enforcement representatives worked closely with your staff in an effort to craft amendments to the measure that would not violate the spirit of your bill and the information it seeks to provide but would recognize that it is essential that sheriff's deputies and police officers retain the flexibilty to react to crime as it occurs and not be bogged down in paperwork. The committee's analysis took into consideration our suggested amendments to the measure but recommended timelines for providing domestic violence reports and/ or a face sheet of the report in a shorter period of time than we had originally suggested.

After consultation with sheriffs around the state, CSSA decided that we could support the bill – and more importantly, we could provide a copy of the face sheet and/or the report to the victim – with the timelines offered in the committee analysis. We were informed by your office that you were in general agreement with those suggestions (including providing the face sheet within 48 hours) save for the recommendation that the report be provided within 5 days of request by a victim. After scheduling at least two meetings that were canceled by your office, we mutually decided to have a good faith discussion of whether the timeline should be 5 days or three days. Unfortunately, previous conversations with your staff did not appear to be relevant during the bill's hearing before Senate Public Safety Committee.

Policy concerns

Placing a strict and time-sensitive mandate on law enforcement always stands to jeopardize our ability to respond to crime as it is happening. Unfortunately, criminals will not respect the fact that we are mandated by the state to finish our reports so we can get them processed and to the victim within a strict 48 hour period.

Ironically, responses to calls such as domestic violence, property crimes, DUI response and drug crimes will be pushed down on the priority list because of the strict mandates in this bill.

Cost concerns:

County	Domestic Violence Calls (1997)
Los Angeles*	67,805
San Bernardino	10,283
Alameda	10,144
Statewide Total	**220,000**

*In 1988 the department changed its policy to require reports to be written for every domestic violence call

As you can see, the workload created by AB 403 is tremendous and will result in significant overtime costs and/or require additional officers to be hired. To use an example close to home, if your staff is working 10 hours a day and you take on two more sponsored bills, they will be forced to work more hours (for which we would be required to pay overtime per collective bargaining agreements) or you would need to hire an additional staff member.

We estimate that approximately 25% of the hours spent on getting these reports ready to be given to a victim within two days would be overtime hours. At a rate of +/- $41 per hour (based on San Bernardino County deputy on overtime) we estimate a statewide ongoing cost of $2.3 million annually in overtime costs alone. As you know, every additional man/woman hour mandated by this bill is a reimbursable state mandate.

We continue to stand ready to work with you and your staff on crafting AB 403 in to a measure that law enforcement can support. We respectfully urge you to reconsider the most recent amendments to the bill and to, at worst, consider allowing law enforcement to provide a copy of the report's face sheet or the entire report within 5 days. This flexibility will greatly mitigate the negative impact on local law enforcement and will certainly bring down the state dollars attached to the mandate on local government.

Thank you for your consideration our concerns. Please call me at 443-7318 should you have any questions or concerns.

Sincerely,

Nick Warner
Legislative Advocate

cc: The Honorable John Vasconcellos, Chair, Senate Public Safety Committee
The Honorable Pat Johnston, Chair, Senate Appropriations Committee

Appropriations Committee Fiscal Summary

	AB 403 (Romero)
Hearing Date: 9/1/99	Amended: 6/29/99 and as proposed to be amended
Consultant: Lisa Matocq	Policy Vote: Pub Saf 4-0

BILL SUMMARY:

AB 403 enacts the Access to Domestic Violence Reports act of 1999, as specified.

Fiscal Impact (in thousands)

Major Provisions	1999-2000	2000-01	2001-02	Fund
Reports	Unknown increased mandated, reimbursable costs and lost revenues to law enforcement agencies			General

STAFF COMMENTS: SUSPENSE FILE. Under current law, a victim of domestic violence must request in writing that a copy of a domestic violence report be provided by mail. According to the author's office, the delay can make it difficult for a victim to establish a history of domestic violence in court in a timely manner when applying for a restraining order. This bill requires state and local law enforcement agencies to provide one free copy of a domestic violence incident report to the victim, within 5 working days of the request (a copy of the face sheet within 48 hours), except as otherwise specified.

According to the California State Sheriff's Association (Association), reports are currently available for distribution within 3-12 days. By requiring the reports to be available within 5 working days of the request, there are unknown but probably minor, increased costs. In addition, there are unknown lost revenues since agencies

currently charge a fee of $5-$15 per report. The lost revenues are probably reimbursable. According to the Department of Justice's "Crime and Delinquency in California, 1997" report, there were about 220,000 domestic violence calls made to law enforcement agencies in 1997. For illustrative purposes, for every 10% of victims that request a free copy of the report, lost revenues could be $220,000 annually.

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Appropriations Committee Fiscal Summary

AB 403 (Romero)

AUG 13 1999

Hearing Date: 8/16/99 **Amended: 6/29/99**
Consultant: Lisa Matocq **Policy Vote: Pub Saf 4-0**

BILL SUMMARY:

AB 403 requires state and local law enforcement agencies to provide one free copy of a domestic violence incident report to the victim, within 2 working days of the request, except as otherwise specified.

	Fiscal Impact (In thousands)			
Major Provisions	**1999-2000**	**2000-01**	**2001-02**	**Fund**
Reports	Unknown increased mandated, potentially reimbursable, probably in excess of $150 annually, and potentially significant			Local

STAFF COMMENTS: This bill probably meets the criteria to be placed on the Suspense File. Under current law, a victim of domestic violence must request in writing that a copy of a domestic violence report be provided by mail. According to the author's office, the delay can make it difficult for a victim to establish a history of domestic violence in court in a timely manner when applying for a restraining order. **This bill** requires a law enforcement agency to provide a free copy of the report within 2 working days of the victim's request. If the agency, for good cause and in writing, notifies the victim of the reason(s) why the report cannot be provided within 2 days, the report would be required to be provided within 10 days of the request.

According to the California State Sheriff's Association (Association), reports are currently available for distribution within 3-12 days. By requiring the reports to be available within 2 working days of the request, there may be increased staff costs to law enforcement agencies. According to the Department of Justice's "Crime and Delinquency in California, 1997" report, there were about 220,000 domestic violence calls made to law enforcement agencies in 1997. It is unknown how many victims request a copy of the incident report currently. For illustrative purposes, if it cost a law enforcement agency $10 per report to comply with the provisions of this bill, and 25% of victims requested a report, increased mandated, potentially reimbursable, costs could be $550,000 annually. However, the Association estimates increased costs of $2.3 million annually in overtime alone since they believe they would need to implement a policy of completing all domestic violence reports within 2 days, regardless of whether or not a copy of the report is requested, in order to comply with the provisions of the bill. In addition, there are unknown lost revenues to law enforcement agencies for providing the copy free of charge.

Date of Hearing: April 21, 1999

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 403 (Romero) – As Amended: March 18, 1999

Policy Committee: Judiciary Vote: 14-0

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

Requires law enforcement agencies to provide to the victim, upon request, a copy of the police report relating to an incident of domestic violence. The victim would be entitled to one copy of the report free of charge. If requested in person, the copy shall be provided when the request is made.

FISCAL EFFECT:

Minor costs, probably less than $100,000, to law enforcement agencies to provide one free copy of requested domestic violence incident reports.

COMMENTS:

Purpose. The author indicates that the bill will provide an expedited method for victims of domestic violence to obtain police reports. Currently victims must write and request copies of the reports to be provided by mail, which can take two to three weeks. This delay can inhibit a victim's ability to present a case for a temporary restraining order. The author also notes that the cost of obtaining police reports can be an additional obstacle for victims of domestic violence, particularly for those victims who need to chronicle several incidents. (The fee in Los Angeles County is $13 per report.)

Analysis Prepared by: Chuck Nicol / APPR. / (916)319-2081

Domestic Violence Information

1. Summary of Chapters 1609/84 and 668/85

Title 5 commencing with Section 13700 of the Penal Code as added by Chapter 1609, Statutes of 1984, and amended by Chapter 668, Statutes of 1985, requires all law enforcement agencies in the state of California to:

A. Develop, adopt, and implement written policies and standards for law enforcement officers' response to domestic violence calls by January 1, 1986. Existing and new local policies must be in writing and available to the public upon request and must include specific standards for a range of related activities.

B. Develop an incident report form and maintain records of all protection orders with respect to domestic violence incidents. This information must be made readily available to law enforcement officers responding to domestic violence related calls for assistance. Provide such information, on a monthly basis, to the Attorney General's Office.

C. Provide specific written information to the victims of domestic violence pursuant to Section 13701 of the Penal Code.

2. Eligible Claimants

Any city, county, city and county, or special district employing peace officers and incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

3. Reimbursable Components

Eligible claimants will be reimbursed for costs incurred during the period 7/1/98 through 8/20/98 for the following activities:

A. Development of an Information System

(1) Development of a System to Record Incoming Domestic Violence Calls

Costs associated with the development of a system for recording all domestic violence related calls for assistance to include whether weapons are involved.

(2) Development of a Domestic Violence Incident Report Form

Costs associated with the development of a Domestic Violence Incident Report form to record and report domestic violence related calls.

(3) Development of a Statement of Information

Costs incurred after January 1, 1986, for the preparation of a Statement of Information for victims of incidents of domestic violence.

(4) Development and Maintenance of a Protective Order System

Costs for the establishment of a system to verify temporary restraining orders, stay away orders, and proof of service at the scene of any incidents of domestic violence. Also reimbursable are costs for the maintenance of all protection order records of an individual accused of illegal behavior, and who applied for, and was granted, such an order to restrain from the home or other court defined areas.

B. Responding to Domestic Violence Incidents

(1) Utilization of the System to Verify Court Orders

Costs for the utilization of a system to verify temporary restraining orders, stay away orders, and proof of service at the scene of any incident of domestic violence.

(2) Costs are reimbursable for activities related to furnishing victims at the scene of a domestic violence incident with written information regarding legal options and available assistance and any necessary explanation of that information, or for providing such information via telephone when law enforcement response is not required.

Costs for time spent by police officers including, but not limited to, responding to domestic violence calls, restoring order, investigation, etc., are **not reimbursable**, except for time spent related to activities in Items 3B(1), 3B(2), and 3B(3).

(3) Completing Domestic Violence Incident Reports

Costs of writing mandated reports that include domestic violence reports, incident, or crime reports directly related to the domestic violence incident.

C. Reports to the Attorney General's Office

Monthly Summary Reports to the State Attorney General

Costs of monthly summary reports that show the total number of domestic violence calls received, and the number of such cases involving weapons, compiled by the local agency and submitted to the Attorney General's Office.

4. Reimbursement Limitation

Any offsetting savings or reimbursement the claimant received from any source including, but not limited to, service fees collected, federal funds, or other state funds as a direct result of this mandate, must be deducted from the amount claimed.

5. Claiming Forms and Instructions

The diagram entitled "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for form DVI-1 and form DVI-2, provided the format of the report and data fields contained within the report are identical to the claim forms included in this chapter. The claim forms provided in this chapter can be duplicated and used by the claimant to file a reimbursement claim.

A. Form DVI-2, Component/Activity Cost Detail

This form is used to segregate the detailed costs by claim component. A separate DVI-2 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

(1) Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the mandated functions performed and specify the actual time devoted to each function by each employee, productive hourly rate, and related fringe benefits.

Reimbursement of personnel services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

Source documents may include, but are not limited to, time logs evidencing actual costs claimed under Reimbursable Activities, time sheets, payroll records, canceled payroll warrants, organization charts, duty statements, pay rate schedules, and other documents evidencing the expenditure.

(2) Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

Source documents may include, but are not limited to, general and subsidiary ledgers, invoices, purchase orders, receipts, canceled warrants, inventory records, and other documents evidencing the expenditure.

(3) Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Attach consultant invoices with the claim.

Source documents may include, but are not limited to, general and subsidiary ledgers, contracts, invoices, canceled warrants, and other documents evidencing the validity of the expenditure.

For audit purposes, all supporting documents must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. Such documents shall be made available to the State Controller's Office on request.

B. Form DVI-1, Claim Summary

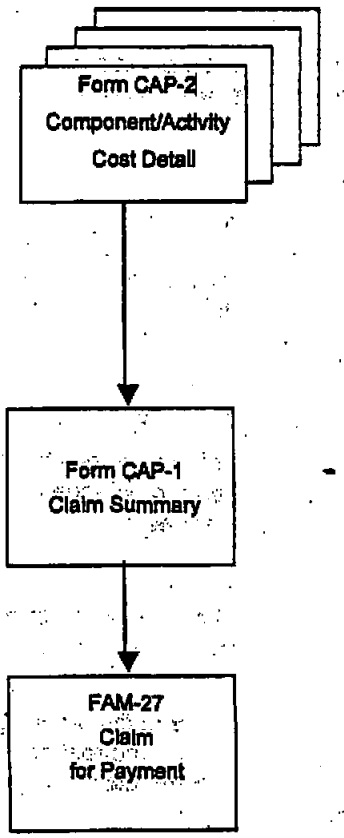
This form is used to summarize direct costs by component and compute allowable indirect costs for the mandate. The direct costs summarized on this form are derived from form DVI-2 and are carried forward to FAM-27.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, as long as the direct labor costs are directly related to the cost of performing the mandate. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have its own ICRP for the program.

C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form DVI-1 must be carried forward to this form in order for the State Controller's Office to process the claim for payment.

Illustration of Forms



Form DVI-2, Component/Activity Cost Detail

Complete a separate form DVI-2 for each cost component for which costs are claimed.

A. **Development of an Information System.**

1. Development of a System to Record Incoming Domestic Violence Calls.
2. Development of a Domestic Violence Incident Report Form.
3. Development of a Statement of Information
4. Development and Maintenance of a Protective Order System.

B. **Responding to Domestic Violence Incidents.**

1. Utilization of the System to Verify Court Orders
2. Providing Information to Victims
3. Completing Domestic Violence Incident Reports

C. **Reports to the Attorney General's Office.**

Monthly Summary Reports to the State Attorney General.

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
DOMESTIC VIOLENCE INFORMATION

(19) Program Number 00015
(20) Date File ____/____/____
(21) LRS Input ____/____/____

LABEL HERE

(01) Claimant Identification Number	Reimbursement Claim Data
(02) Mailing Address	(22) DVI-1, (03)
Claimant Name	(23) DVI-1, (04)(1)(d)
County of Location	(24) DVI-1, (04)(2)(d)
Street Address or P.O. Box	(25) DVI-1, (04)(3)(d)
City State Zip Code	(26) DVI-1, (06)

Type of Claim	Estimated Claim	Reimbursement Claim		
	(03) Estimated ☐	(09) Reimbursement ☐	(27)	
	(04) Combined ☐	(10) Combined ☐	(28)	
	(05) Amended ☐	(11) Amended ☐	(29)	
			(30)	
Fiscal Year of Cost	(06)	(12) 7/1/98 to 8/20/98	(31)	
Total Claimed Amount	(07)	(13)	(32)	
Less: 10% Late Penalty, not to exceed $1,000		(14)	(33)	
Less: Estimated Claim Payment Received		(15)	(34)	
Net Claimed Amount		(16)	(35)	
Due from State	(08)	(17)	(36)	
Due to State		(18)	(37)	

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985, set forth on the attached statements.

Signature of Authorized Representative _____ Date _____

Type or Print Name _____ Title _____

(39) Name of Contact Person for Claim _____ Telephone Number (____) _____ _____ Ext. _____

DOMESTIC VIOLENCE INFORMATION Certification Claim Form Instructions	FORM FAM-27

(01) Leave blank.

(02) A set of mailing labels with the claimant's I.D. number and address has been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label in the space shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.

(03) to (08) Leave blank.

(09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.

(11) If filing an amended claim, enter an "X" in the box on line (11) Amended.

(12) No entry required.

(13) Enter the amount of reimbursement claim from form DVI-1, line (11). If more than one form DVI-1 is completed due to multiple department involvement in the mandate, add line (11) of each form DVI-1 and enter the total.

(14) If a reimbursement claim is filed after May 16, 2000, the claim must be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or $1,000, whichever is less.

(15) No entry required.

(16) Enter the result of subtracting line (14) from line (13).

(17) Enter the amount from line (16) on line (17), Due from State.

(18) to (21) Leave blank.

(22) to (37) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of line (22) through (26) for the reimbursement claim [e.g. DVI-1, (04), means the information is located on form DVI-1, line (04)]. Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar (i.e., no cents). The indirect cost percentage should be shown as a whole number and without the percent symbol (i.e., 35.23% should be shown as 35).

(38) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.

(39) Enter the name and telephone number of the person whom this office should contact if additional information is required.

SUBMIT A SIGNED ORIGINAL AND A COPY OF FORM FAM-27, AND A COPY OF ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

MANDATED COSTS DOMESTIC VIOLENCE INFORMATION CLAIM SUMMARY	FORM DVI-1

(01) Claimant	(02) Type of Claim Reimbursement Claimable Period of Costs: 7/1/98 to 8/20/98

Claim Statistics

(03) Number of domestic violence incidents reported for the period 7/1/98 to 8/20/98	

Direct Costs	**Object Accounts**			
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Total
1. Development of an Information System				
2. Responding to Domestic Violence Incidents				
3. Reports to the Attorney General's Office				
(05) Total Direct Costs				

Indirect Costs

(06) Indirect Cost Rate	[From ICRP]	%
(07) Total Indirect Costs	[Line (06) x Line (05)(a)] or [Line (06) x {Line (05)(a) + Line (05)(b)}]	
(08) Total Direct and Indirect Costs	[Line (05)(d) + Line (07)]	

Cost Reduction

(09) Less: Offsetting Savings, if applicable		
(10) Less: Other Reimbursements, if applicable		
(11) Total Claimed Amount	[Line (08) – {Line (09) + Line (10)}]	

DOMESTIC VIOLENCE INFORMATION CLAIM SUMMARY Instructions	FORM DVI-1

(01) Enter the name of the claimant.

(02) Type of Claim. No entry required.

(03) Enter the number of domestic violence incidents that were reported for the period 7/1/98 to 8/20/98.

(04) Reimbursable Components. For each reimbursable component, enter the total from form DVI-2, line (05), columns (d), (e), and (f).

(05) Total Direct Costs. Total columns (a) through (d).

(06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have its own ICRP for the program.

(07) Total Indirect Costs. Multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06).

(08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(d), and Total Indirect Costs, line (07).

(09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.

(10) Less: Other Reimbursements, if applicable. Enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.

(11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10), from Total Direct and Indirect Costs, line (08). Enter the remainder on this line and carry the amount forward to form FAM-27, line (13) for the Reimbursement Claim.

MANDATED COSTS
DOMESTIC VIOLENCE INFORMATION
COMPONENT/ACTIVITY COST DETAIL

FORM DVI-2

(01) Claimant

(02) Claimable Period of Costs: 7/1/98 to 8/20/98

(03) Reimbursable Component: Check only **one** box per form to identify the component being claimed.

☐ Development of an Information System ☐ Providing Information to Victims

☐ Responding to Domestic Violence Incidents ☐ Reports to the Attorney General's Office

(04) Description of Expenses: Complete columns (a) through (f).

(a) Employee Names, Job Classifications, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	Object Accounts (d) Salaries	(e) Benefits	(f) Services and Supplies
(05) Total ☐ Subtotal ☐ Page:____of____					

MANDATED COSTS DOMESTIC VIOLENCE INFORMATION COMPONENT/ACTIVITY COST DETAIL	FORM DVI-2

(01) Enter the name of the claimant.

(02) No entry required.

(03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form DVI-2 shall be prepared for each component which applies.

(04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services and travel expenses. **The descriptions required in column (04)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. Such documents shall be made available to the State Controller's Office on request.

Object/ Sub object Accounts	Columns						Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	
Salaries	Employee Name Title Activities	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked			
Benefits		Benefit Rate	Hours Worked		Benefits = Benefit Rate x Salaries		
Services and Supplies Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used	
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost of Services Performed	Invoice

(05) Total line (04), columns (d), (e), and (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the component costs, number each page. Enter totals from line (05), columns (d), (e), and (f) to form DVI-1, block (04), columns (a), (b), and (c) in the appropriate row.

Item # 6

Proposed Parameters and Guidelines (April 9, 1999)

Penal Code Section 13730, Subdivision (c)
Chapter 965, Statutes of 1995

Domestic Violence Incident Reporting

Executive Summary

Summary of the Mandate

On February 26, 1998, the Commission determined that Penal Code section 13730, subdivision (c), imposed a new program upon local law enforcement agencies by requiring agencies to include in their domestic violence incident report additional information regarding the use of alcohol and controlled substances by the alleged abuser, and any prior domestic violence response to the same address. (The Statement of Decision is attached as Exhibit A.)

The Commission found, however, that while this additional information must be included on the domestic violence incident report, the performance of this incident reporting activity is presently not state mandated because:

- The State Budget Act of 1997-98 makes the completion of the incident report itself *optional*[1], and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

Accordingly, the Commission concluded that Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does not impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581.

However, during window periods when the state operates without a budget, the original suspension of the mandate is not in effect. Thus, the Commission concluded that a reimbursable state mandated program exists during window periods when the state operates without a budget until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

Staff Analysis

On March 30, 1998, and November 20, 1998, the claimant, the County of Los Angeles, submitted proposed parameters and guidelines on the test claim statute. (Exhibits B and C.) In addition, on May 5, 1998, the State Controller's Office submitted comments to the proposed parameters and

[1] Statutes of 1984, Chapter 1609 added the requirement to prepare the underlying domestic violence incident report.

guidelines. (Exhibit D.) The staff analysis regarding the issues presented by the parties is presented below.

Title of the Parameters and Guidelines

Staff deleted from the claimant's proposed title references to Penal Code section 13519, Domestic Violence Incident Training. The Commission denied the test claim as to Penal Code section 13519 and found that Domestic Violence Training did not constitute a reimbursable state mandated program under article XIII B, section 6.

Section III. Period of Reimbursement

This section was amended to include the reimbursement period of July 1, 1996, (the start of the new fiscal year for the year Chapter 965, Statutes of 1995, became effective) through July 15, 1996, and July 1, 1998 through August 20, 1998, when the State Budget Acts made the domestic violence incident reporting program optional.

Staff notes that Government Code section 17581 was amended on September 22, 1998 to provide that suspended mandates *remain* suspended for any window period immediately following a fiscal year when the Budget Act has not been enacted for the subsequent fiscal year.[2] Therefore, beginning with fiscal year 1999-2000, reimbursement is not required as long as the underlying domestic violence incident reporting program remains suspended.

Section IV. Reimbursable Activities

In the claimant's original submittal, the claimant requested reimbursement for the following activities:

- Development of updated domestic violence incident report policies and procedures.
- Implementation of updated domestic violence incident report policies and procedures.
- Modification of pre-existing domestic violence reporting systems, including computerized reporting systems, to obtain information on the number of prior responses to the same address.
- New domestic violence incident reporting, based either on actual time spent on reporting activities, or on standard times identified by the Los Angeles County Sheriff's Department.

A pre-hearing conference, attended by the claimant and interested parties, was conducted in April 1998 to discuss the claimant's parameters and guidelines and the standard times proposed by the claimant to complete the incident report. Some interested parties objected to the standard times proposed by the claimant as being too low. Thus, staff requested that interested parties submit time studies reflecting the time it took their officers to include notations on the use of alcohol or drug use by the alleged abuser and the number of prior responses to the same address to complete the domestic violence incident report. However, the time studies submitted by several local agencies reflected a wide variance in the time it took officers to investigate, retrieve and record the information required by the test claim statute. Based on the wide range of times submitted by different local jurisdictions, staff finds that a standard time would *not* be appropriate in this case.

[2] Gov. Code, § 17581, subd. (a), as amended by Stats. 1998, c. 681 (A.B. 1963).

On November 20, 1998, the claimant submitted revised draft parameters and guidelines deleting references to the standard times originally proposed. In addition, the claimant proposed new language for recording the required information on the underlying domestic violence incident reporting forms. Since reimbursement of the underlying domestic violence incident report (Statutes of 1984, Chapter 1609) is being claimed under a separate set of claiming instructions, the claimant states that its revisions are intended to allow claimants to recover costs for both programs by completing one set of claiming instructions.

However, the claiming instructions for all of the 47-day mandates resulting from the delay in enacting the 1997 State Budget Bill, including the underlying domestic violence incident report were issued by the State Controller's Office in February 1999. (Exhibit E.) Accordingly, a *second* set of claiming instructions for this test claim statute during the 1997 window period will need to be completed by local agencies.

Nevertheless, staff agrees with the substance of the revisions proposed by the claimant and has modified the reporting component (Section IV. D) for clarification and consistency with the test claim statute.

In addition, staff identified the following activities as *one-time* activities only: (1) developing domestic violence incident reporting policies and procedures; (2) modifying pre-existing domestic violence incident reporting systems; (3) implementing the policies and procedures, including printing and distribution of the policies, development of instructional aids and training materials, and training local law enforcement officers who normally respond to domestic violence calls on the test claim requirements.[3]

Finally, on May 5, 1998, the State Controller's Office submitted comments requesting that additional language be added to section IV.D to identify supporting documentation which evidences actual costs claimed for the new reporting requirements under the test claim statute. SCO requests the addition of the following language:

> "If a claimant elects to claim actual costs, time logs must be provided with each claim filed to evidence actual costs being claimed."

Staff submits, however, that references to supporting documentation are more appropriately included in section VI, "Supporting Data". Accordingly, staff has amended section VI as follows:

> "For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, time logs, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.)...."

Staff Recommendation

Staff recommends that the Commission adopt Staff's Proposed Parameters and Guidelines, as presented on Bates page 5.

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[3] Pursuant to the Commission's regulations, the Commission has the authority to identify one-time and ongoing costs in the parameters and guidelines. (§ 1183.1, subd. (a)(4).)

Claimant

County of Los Angeles

Chronology

12/27/96	Test claim filed by the County of Los Angeles
2/26/98	Statement of Decision adopted by the Commission on State Mandates
3/30/98	Proposed Parameters and Guidelines submitted by claimant
4/22/98	Pre-hearing conference
4/23/98	Staff Draft Proposed Parameters and Guidelines issued.
5/05/98	Response received from the State Controller's Office
11/20/98	Revised Draft Parameters and Guidelines submitted by claimant

Staff's Proposed Parameters and Guidelines

Penal Code Section 13730, Subdivision (c)
Chapter 965, Statutes of 1995

Domestic Violence Incident Reporting

I. Summary and Source of the Mandate

The Commission determined that Penal Code section 13730, subdivision (c), imposed a new program upon local law enforcement agencies by requiring agencies to include in their domestic violence incident report additional information regarding the use of alcohol and controlled substances by the alleged abuser, and any prior domestic violence response to the same address.

However, the Commission found that while this additional information must be included on the domestic violence incident report, the performance of this incident reporting activity is presently not state mandated because:

- The State Budget Act of 1997-98 makes the completion of the incident report itself *optional*, and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

Accordingly, Penal Code section 13730, subdivision (c), as amended by Statutes of 1995, Chapter 965 does not impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581. However, during window periods when the state operates without a budget, the original suspension of the mandate is not in effect.

The Commission determined that for the *limited* window period from July 1, 1997 through August 16, 1997, the domestic violence incident reporting, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity because the 1997-98 Budget Act was not chaptered until August 17, 1997. (Statutes of 1997, Chapter 282.)

The Commission further determined that in all subsequent "window periods" when the state operates without a budget, the domestic violence incident reporting program, is a reimbursable state mandated activity until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.[4]

II. Eligible Claimants

Eligible claimants include local law enforcement agencies of any city, county, or city and county.

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[4] Staff notes that another window period applicable to this mandate existed from July 1, 1996, through July 15, 1996, and from July 1, 1998, through August 20, 1998, when the State Budget Act made the incident reporting program optional under Government Code section 17581.

Effective September 22, 1998, suspended mandates remain suspended for any window period immediately following a fiscal year when the Budget Act has not been enacted for the subsequent fiscal year. (Gov. Code, § 17581, subd. (a), as amended by Stats. 1998, c. 681 [A.B. 1963].)

III. Period of Reimbursement

At the time this test claim was filed, section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim was filed by the County of Los Angeles on December 27, 1996. Statutes of 1995, Chapter 965 became effective and operative on January 1, 1996. Therefore, only costs incurred during the dates described below are eligible for reimbursement:

- From July 1, 1996, (the start of the new fiscal year for the year Statutes of 1995, Chapter 965 became effective) through July 15, 1996, when the State Budget Act made the incident reporting program optional under Government Code section 17581.
- From July 1, 1997, (the start of the new fiscal year) through August 16, 1997, when the State Budget Act made the incident reporting program optional under Government Code section 17581.
- From July 1, 1998, (the start of the new fiscal year) through August 20, 1998, when the State Budget Act made the incident reporting program optional under Government Code section 17581.

Actual costs for one fiscal year shall be included in each reimbursement claim. Estimated costs to be incurred in the current fiscal year should be on a separate claim. Estimated and actual reimbursement claims may be filed at the same time, if applicable.

Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of costs shall be submitted within 120 days of the issuance of the claiming instructions issued by the State Controller.

If total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, supplies, services, travel and training for the following activities are eligible for reimbursement:

A. The one-time activity of developing domestic violence incident reporting policies and procedures to reflect the requirement in Statutes of 1995, Chapter 965 that the domestic violence incident report include both of the following:

1. A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.
2. A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

B. The one-time activity of modifying pre-existing domestic violence incident reporting systems, including computerized reporting systems, to obtain information on the number of prior responses to the same address involving the same alleged abuser or victim.

C. The one-time activity of implementing updated domestic violence incident reporting policies and procedures as follows:

1. Printing and distribution of new domestic violence incident reporting policies and procedures that reflect the requirements of Statutes of 1995, Chapter 965 as described in section IV A above to all stations, substations, and other sites that normally respond to incidents of domestic violence.

2. Development of instructional aids and training materials for purposes of training local law enforcement officers who normally respond to incidents of domestic violence on the requirement that the domestic violence incident report include both of the following:

   a. A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

   b. A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

3. Training local law enforcement officers who normally respond to incidents of domestic violence on the requirement in Statutes of 1995, Chapter 965 that the domestic violence incident report include both of the following:

   a. A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

   b. A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

D. New Domestic Violence Incident Reporting (On-going)

1. Obtaining report information through preliminary investigations and determinations regarding

   a. signs that the alleged abuser was under the influence of alcohol or a controlled substance, and

   b. the number of prior responses by any law enforcement agency to a domestic violence call at the same address involving the same alleged abuser or victim

   to the extent this activity is not claimed under the *Domestic Violence Arrest Policies* program (Statutes of 1995, Chapter 246).

2. Retrieving information to report the number of prior responses by any law enforcement agency to a domestic violence call at the same address involving the same alleged abuser or victim.

3. Notating and recording the following information on domestic violence incident reports:

a. Signs that the alleged abuser was under the influence of alcohol or a controlled substance; and

b. The number of prior responses by any law enforcement agency to a domestic violence call at the same address involving the same alleged abuser or victim.

V. Claim Preparation

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in section IV of this document, except that standard times may be used as provided herein.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be specifically traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

   Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the mandated functions performed and specify the actual time devoted to each function by each employee, productive hourly rate and related fringe benefits.

   Reimbursement for personal services include compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

   Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

   Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Attach consultant invoices with the claim.

4. Fixed Assets

List the cost of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is reimbursable.

5. Travel

Travel expenses for mileage, per diem, lodging and other employee entitlements are reimbursable in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and time of travel, destination points and travel costs.

6. Training

The cost of training specified in Section IV, Reimbursable Activities, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title of the training session, the dates attended and the location. Reimbursable costs include salaries and benefits, registration fees, transportation, lodging and per diem.

B. Indirect Costs

Indirect costs are defined as costs which 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 both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is reimbursable utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing a departmental Indirect Cost Rate Proposal (ICRP) for the department if an indirect cost rate in excess of 10% is claimed. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate is in excess of 10%.

VI. Supporting Data

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, time logs, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. State Controller's Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

RAPE VICTIM COUNSELING CENTER NOTICES

1. Summary of Chapters 999/91 and 224/92

The provisions of Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2), as added and amended by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, and Penal Code Section 13701, as amended by Chapter 999, Statutes of 1991, require local law enforcement agencies to: Reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape victim counseling center, notify the victim-selected center, and subject to the approval of the victim and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

On July 22, 1993, the Commission on State Mandates determined that Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992, resulted in state mandated costs which are reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

2. Eligible Claimants

Any city or county incurring increased costs as a result of this mandate is eligible to claim reimbursement of these costs.

3. Appropriations

Claims may only be filed with the State Controller's Office for programs that have been funded in the state budget, the State Mandates Claims Fund, or in special legislation. Initial funding for Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, is provided for in the local government claims bill AB 818 enacted as Chapter 914, Statutes of 1995. The bill appropriated $191,000 for payment of claims for the period 01/01/92 to 06/30/92 and for fiscal years 1992/93, 1993/94, 1994/95 and 1995/96.

To determine if this program is funded in subsequent fiscal years, refer to the schedule "Appropriations for State Mandated Cost Programs" in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September of each year to city fiscal officers and county auditors.

4. Types of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement claim and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

B. Minimum Claim

Section 17564(a), Government Code, provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds $200 per program per fiscal year.

5. Filing Deadline

A. Initial Funding of a Mandate

After funds are initially provided by special legislation to reimburse costs of State mandated programs, claims are due 120 days from the date the State Controller's

Office issues claiming instructions for the program. Accordingly, claims to be filed are:

(1) Reimbursement claims detailing the actual costs incurred for the period 01/01/92 to 06/30/92 and 1992/93, 1993/94, and 1994/95 fiscal years must be filed with the State Controller's Office and postmarked by August 19, 1996. If the reimbursement claim is filed after the deadline of August 19, 1996, the approved claim must be reduced by a late penalty of 10%, not to exceed $1,000. Claims filed more than one year after the deadline will not be accepted.

(2) Estimated claims for costs to be incurred during the 1995/96 fiscal year must be filed with the State Controller's Office and postmarked by August 19, 1996. Timely filed estimated claims are paid before late claims. If a payment is received for the estimated claim, a 1995/96 reimbursement claim must be filed by November 30, 1996.

B. Annually Thereafter

(1) Refer to Item 3 "Appropriations" to determine if the program is funded for the current fiscal year. If funding is available, an estimated claim must be filed with the State Controller's Office and postmarked by November 30, of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.

(2) After having received payment for an estimated claim, the claimant must file a reimbursement claim by November 30, of the following fiscal year regardless whether the payment was more or less than the actual costs. If the local agency fails to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, the local agency may file a reimbursement claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. (See item 3 above).

A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by November 30 following the fiscal year in which costs were incurred. If the claim is filed after the deadline but by November 30 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed $1,000. Claims filed more than one year after the deadline will not be accepted.

6. Reimbursable Components

Local law enforcement agencies shall be reimbursed for the increased costs which they are required to incur to: Reprint existing "Victims of Domestic Violence" cards with new information to assist rape victims, furnish a rape victim with a "Victims of Domestic Violence" card, obtain victim consent to notify a local rape counseling center, notify the victim-selected local rape counseling center, and subject to the victim's approval and upon the treating hospital's request, verify whether the local rape victim counseling center has been notified.

For each eligible claimant, the following one-time costs and continuing costs are reimbursable:

A. Initial One-Time Costs:

(1) Costs of updating policies and procedures to conform with the special requirements of Chapter 999, Statutes of 1991 and Chapter 224, Statutes of 1992.

(2) Costs of modifying existing record-keeping systems to provide reliable and timely retrieval of verification information required by Chapter 224, Statutes of 1992, not to exceed $2,000.

B. Ongoing Costs:

(1) Costs of reprinting the existing "Victims of Domestic Violence" card to add information, relating to rape victim services, required by Chapter 999, Statutes of 1991, but not to exceed one reprinting per fiscal year.

(2) Law enforcement's road officer, clerical, and dispatcher costs required to: Request each victim's consent to notify a rape counseling center, each time an alleged violation(s) includes at least one violation of Penal Code Sections 261, 261.5, 262, 286, 288a, 289, alleged separately or in combination with other violations; furnish a rape victim with a "Victims of Domestic Violence" card; record, file, and/or data-process state mandated information; and, provide hospital verification whether the local rape victim counseling center has been notified, upon the consent of the victim.

7. Reimbursement Limitations

Any offsetting savings or reimbursement the claimant received from any source (e.g. federal, state grants, foundations, etc.) as a result of this mandate, shall be identified and deducted so only net local costs are claimed.

8. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms RVC-1, RVC-2 and form RVC-2.1 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated and reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

A. Form RVC 2.1 Component/Activity Cost Detail

This form is used to detail the cost of assisting the rape victims and notifying a local rape victim counseling center. Costs reported on this form must be supported as follows:

(1) Salaries and Benefits

(a) For ongoing costs, excluding reprinting costs, unit costs must be claimed for each specified victim, based on the following standard times:

(1) 10 minutes—road officer's time related to the subject state mandates

(2) 4 minutes—clerical's duties related to recording, filing and/or data processing

(3) 2 minutes—dispatcher's time related to hospital verification

Each standard time is multiplied by the average productive hourly rate, including applicable indirect cost for road officers, clerical staff and dispatchers assigned state mandated duties and the results totaled to obtain a reimbursable unit cost. Such reimbursable unit cost is then multiplied by the total number of reported incidents regarding alleged violations.

The standard times set forth herein shall remain in effect through June 30, 1996. For the reimbursement period following June 30, 1996, the Commission on State Mandates, at a public hearing, shall review these standard times and shall make any necessary revisions to the standard times set forth herein.

B. Form RVC-2 Component/Activity Cost Detail

This form is used to segregate the detail costs by claim component. A separate form RVC-2 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

(1) Salaries and Benefits

For one-time costs and reprinting costs, identify the employee(s) and/or show, the classification of the employee(s) involved. Describe the mandated functions performed by each employee, and specify the actual time spent, productive hourly rate and related fringe benefits.

Source documents required to be maintained by the claimant may include, but are not limited to, employee time records that show the employee's actual time spent on the mandate.

(2) Office Supplies

These charges are allowed only for one-time costs and reprinting costs. Claimed expenditures must be identified with a direct cost reimbursable activity resulting from the subject state mandates. List the cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders and other documents evidencing the validity of the expenditures.

(3) Contracted Services

Charges are allowed only for one-time costs and reprinting costs. List costs incurred for contract services for the subject state mandate. Contracting costs are reimbursable to the extent that the function performed requires special skills or knowledge that is not readily available from the claimant's staff. Use of contract services must be justified by the claimant.

Give the name of the contractor(s) who performed the services. Describe the activities performed by each named contractor, actual time spent on the mandate, inclusive dates when services were performed and itemize all costs for services performed. Attach consultant invoices with the claim.

Source documents required to be maintained by the claimant may include, but are not limited to, contracts, invoices and other documents evidencing the validity of the expenditures.

For audit purposes, all supporting documents must be retained for a period of four years after the end of the calendar year in which the reimbursement claim was filed or last amended. Effective July 1, 1996, the document retention period is two years after the end of the calendar year in which the reimbursement claim was filed or last amended. Such documents shall be made available to the State Controller's Office on request.

C. Form RVC-1, Claim Summary

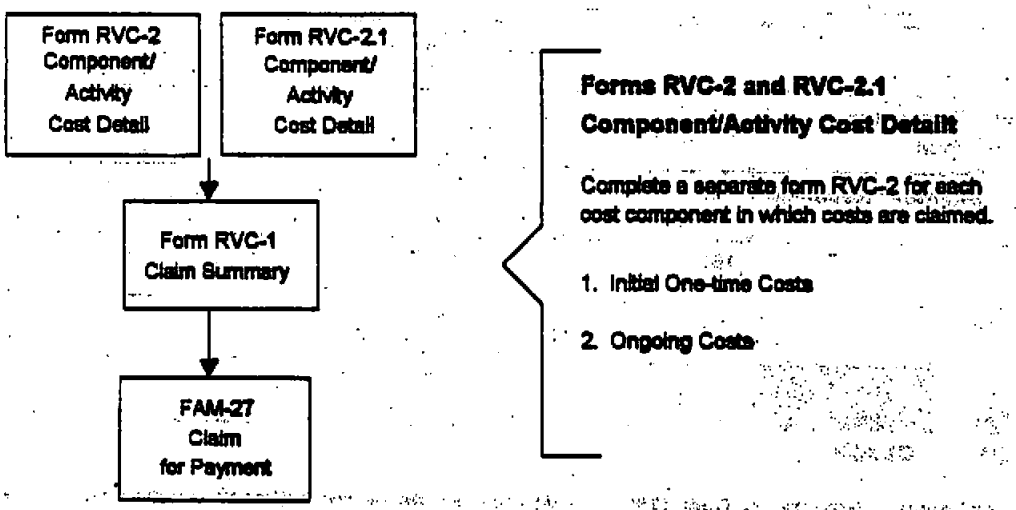
This form is used to summarize direct costs by claim component and compute allowable indirect costs for the mandate. Claim statistics shall identify the amount of work performed during the claim period for which costs are claimed. The claimant must provide the number of rape victims who received information assistance from law enforcement personnel. Direct costs summarized on this form are derived from forms RVC-2 and RVC-2.1 and are carried forward to form FAM-27.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have their own ICRP.

D. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form RVC-1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

Illustration of Claim Forms



CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
RAPE VICTIM COUNSELING CENTER NOTICES

For State Controller Use Only
(19) Program Number 00127
(20) Date File ___/___/___
(21) LRS Input ___/___/___

LABEL HERE

(01) Claimant Identification Number

(02) Mailing Address

Claimant Name

County of Location

Street Address or P. O.. Box

City State Zip Code

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐
Fiscal Year of Cost	(06) 19___/___	(12) 19___/___
Total Claimed	(07)	(13)
Less: 10% Late Penalty, but not to exceed $1000 (if applicable)		(14)
Less: Estimated Claim payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

Reimbursement Claim Data

(22) RVC-1, (03)	
(23) RVC-1, (04)(1)(d)	
(24) RVC-1, (04)(2)(d)	
(25) RVC-1, (09)	
(26) RVC-1, (08)	
(27)	
(28)	
(29)	
(30)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	
(37)	

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application for nor any grant or payment received, other than from the claimant, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 999, Statutes of 1991, and Chapter 224, Statutes of 1992, set forth on the attached statements.

Signature of Authorized Representative _____ Date _____

Type or Print Name _____ Title _____

(39) Name of Contact Person for Claim _____ Telephone Number (___) ___-____ Ext. ____

RAPE VICTIM COUNSELING NOTICE Certification Claim Form Instructions	FORM FAM-27

(01) Leave blank.

(02) A set of mailing labels with the claimant's I.D. number and address has been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors. Affix a label in the space shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.

(03) If filing an original estimated claim, enter an "X" in the box on line (03) Estimated.

(04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.

(05) If filing an amended or combined claim, enter an "X" in the box on line (05) Amended. Leave boxes (03) and (04) blank.

(06) Enter the fiscal year in which costs are to be incurred.

(07) Enter the amount of estimated claim. If the estimate exceeds the prior year's actual by 10%, complete form RVC-1 and enter the amount from line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form RVC-1.

(08) Enter the same amount as shown in line (07).

(09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) If filing an original reimbursement claim on behalf of districts within the county, enter an " X " in the box on line (10) Combined.

(11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X " in the box on line (11) Amended

(12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.

(13) Enter the amount of reimbursement claim from form RVC-1, line (11). If more than one form RVC-1 is completed due to multiple department involvement in this mandate, add line (11) of each form RVC-1.

(14) Filing Deadline, Initial Claims of Ch. 999/91 and 224/92. If the reimbursement claim for the period (i.e., 01/01/92 to 06/30/92, 1992/93 1993/94 or 1994/95) is filed after August 19, 1996, the claim must be reduced by late penalty. Enter either the product of multiplying line (13) by the factor 0.10 [10% penalty] or $1,000, whichever is less.

Filing Deadline, Annually Thereafter. If the reimbursement claim is filed after November 30 following the fiscal year in which costs were incurred, the claim must be reduced by late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or $1,000, whichever is less.

(15) If filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim. Otherwise, enter a zero.

(16) Enter the result of subtracting line (14) and line (15) from line (13).

(17) If line (16) Net Claimed Amount is positive, enter that amount on line (17) Due from State.

(18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.

(19) through (21) for State Controller's use only. Leave blank.

(22) through (37) for the Reimbursement Claim. Bring forward the cost information as specified on the left-hand column of lines (22) through (26) for the reimbursement claim (e.g., RVC-1 (3), means the information is located on form RVC-1, line (3). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). The claim cannot be processed for payment unless this date block is correct and complete.

(38) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.

(39) Enter the name of the person and telephone number that this office should contact if additional information is required.

SUBMIT A SIGNED ORIGINAL AND A COPY OF FORM FAM-27, AND A COPY OF ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursement
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250-5875

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursement
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

MANDATED COSTS RAPE VICTIM COUNSELING CENTER NOTICES CLAIM SUMMARY	FORM RVC-1

(01) Claimant	(02) Type of Claim	Fiscal Year
	Reimbursement ☐ Estimated ☐	19__/__

Claim Statistics

(03) Number of rape victims involved in at least one alleged violation of Penal Code Sections 261, 261.5, 262, 288a, or 289 for the claim year.	

Direct Costs	Object Accounts			
(04) Reimbursable Components:	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Total
1. Initial One-time Costs				
2. (a) Ongoing Costs (From RVC - 2)				
(b) Ongoing Costs (From RVC-2.1)				

(05) Total Direct Costs		
Indirect Costs		
(06) Indirect Cost Rate	[From ICRP]	%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [line (06) x (line (05)(a) + line (05)(b))]	
(08) Total Direct and Indirect Costs:	[Line (05)(d) + line (07)]	
Cost Reduction		
(09) Less: Offsetting Savings, if applicable		
(10) Less: Other Reimbursements, if applicable		
(11) Total Claimed Amount	[Line (08) - (Line (09) + Line (10))]	

RAPE VICTIM COUNSELING CENTER NOTICES CLAIM SUMMARY Instructions	FORM RVC-1

(01) Enter the name of the claimant. If more than one department has incurred costs for this mandate, give the name of each department. A form RVC-1 should be completed for each department.

(02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.

Form RVC-1 must be filed for a reimbursement claim. Do not complete form RVC-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07), Estimated. However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form RVC-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) Enter the number of rape victims involved in at least one alleged violation of Penal Code Section 261, 261.5, 262, 286a, or 289 for the claim year.

(04) Reimbursable Components. For each reimbursable component, enter the totals from form RVC-1, line (05) columns (d), (e) and (f) to form RVC-1, block (04) columns (a), (b) and (c) in the appropriate row. Total each row.

(05) Total Direct Costs. Total columns (a) through (d).

(06) Indirect Cost Rate. Enter the indirect cost rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have their own ICRP for the program.

(07) Total Indirect Costs. Multiply Total Salaries, line (05)(a) by the Indirect Cost Rate, line (06). If both Salaries and Benefits were used in the distribution base for the computation of the indirect cost rate, then multiply total Salaries and Benefits, line (05)(a) and line (05)(b) by the Indirect Cost Rate, line (06).

(08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(d) and Total Indirect Costs, line (07).

(09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.

(10) Less: Other reimbursements, if applicable. Enter the amount of other reimbursements received from any source (i.e., federal, state grants, foundations, etc.) which reimbursed any portion of the mandated program. Submit a schedule detailing the reimbursement sources and amounts.

(11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09) and Other Reimbursements, line (10) from Total Direct and Indirect Costs, line (08). Enter the remainder on this line and carry forward the amount to form FAM-27, line (07) for the Estimated Claim, or line (13) for the Reimbursement Claim.

MANDATED COSTS RAPE VICTIM COUNSELING CENTER NOTICES COMPONENT/ACTIVITY COST DETAIL	FORM RVC-2

(01) Claimant | (02) Fiscal Year Costs Were Incurred

(03) Reimbursable Components: Check only one box per form to identify the component being claimed.

☐ 1. Initial One-time Costs

☐ 2. Ongoing Costs (Reprinting of Cards)

(04) Description of Expenses: Complete columns (a) through (f).

(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	Object Accounts (d) Salaries	(e) Benefits	(f) Services and Supplies
(05) Total ☐ Subtotal ☐ Page:_____of_____					

RAPE VICTIMS COUNSELING CENTER NOTICE COMPONENT/ACTIVITY COST DETAIL Instructions	FORM RVC-2

(01) Enter the name of the claimant.

(02) Enter the fiscal year for which costs were incurred.

(03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form RVC-2 shall be prepared for each component which applies.

(04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in line (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, etc. All supporting documents must be retained by the claimant for a period of four years after the end of the calendar year in which the reimbursement claim was filed or last amended. Effective July 1, 1998, the document retention period is two years after the end of the calendar year in which the reimbursement claim was filed or last amended. Such documents shall be made available to the State Controller's Office on request.

Object/ Sub-object Accounts	Columns						Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	
Salaries	Employee Name Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked			
Benefits	Activities Performed	Benefit Rate		Salaries	Benefits = Benefit Rate x Salaries		
Services and Supplies Office Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Consumed	
Contracted Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost for Services Performed	Invoice

(05) Total line (04), columns (d), (e) and (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from line (05), columns (d), (e) and (f) to form RVC-1, block (04), line (01) or line (02)(a), columns (a), (b) and (c) in the appropriate row.

MANDATED COSTS
RAPE VICTIM COUNSELING CENTER NOTICES
COMPONENT/ACTIVITY COST DETAIL

FORM RVC-2.1

(01) Claimant

(02) Fiscal Year Costs Were Incurred

(03) Reimbursable Component: Ongoing Costs: Rape victims involved in at least one alleged violation of Penal Code Sections 261, 261.5, 262, 288a, or 289 for the claim year

(04) Description of Expenses: Complete (a) through (f)

(a) Standard Time (Hour/Victim)	(b) No. of Victims	(c) Total Time (Hours) (a x b)	(d) Hourly Rate	Object Accounts (e) Salaries (c x d)	Object Accounts (f) Fringe Benefits
Road Officers (10 min/victim) 0.166 Hrs.					
List job classification(s)					
1.					
2.					
3.					
* Total Cases					
Clericals (4 min/victim) 0.066 Hrs.					
1.					
2.					
3.					
* Total Cases					
Dispatchers (2 min/victim) 0.033 Hrs.					
1.					
2.					
3.					
* Total Cases					
*Total victims not to exceed RVC-1, line (03)					

(05) Total ☐ Subtotal ☐ Page_____ of _____

New 4/96

Chapters 999/91 and 224/92

RAPE VICTIM COUNSELING CENTER NOTICES COMPONENT/ACTIVITY COST DETAIL Instructions	FORM RVC-2 .1

(01) Enter the name of the claimant.

(02) Enter the fiscal year for which costs were incurred.

(03) Reimbursable Component. This line identifies the activity for which costs may be claimed on form RVC-1.

(04) Description of Expenses. Complete columns (a) through (f).

Column (a): Road officers, clericals and dispatchers must be listed by job classification(s). Road officers are allowed ten minutes or 0.166 hours per victim for time related to the state mandate. Clericals are allocated four minutes or 0.066 hours per victim for time related to recording, filing, and/or data processing. Dispatchers are allowed two minutes or 0.033 hours per victim for time related to notification of the local rape victim counseling center by the hospital.

Column (b): Enter the number of victims assisted by employees at each job classification. The total number of victims not exceed the number of victims shown on form RVC-1, line (03).

Column (c): Enter the result of multiplying the standard time by the number of victims to arrive at the total time in hours.

Column (d): Enter the hourly rate by job classification.

Column (e): Enter the result of multiplying the total time in hours by the hourly rate to arrive at the total salaries.

Column (f): Enter the result of multiplying the fringe benefit rate by total salaries to arrive at the amount for fringe benefits.

(05) Total line (04), columns (e) and (f) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from line (05), columns (e) and (f) to form RVC-1, block (04) line (02)(b), columns (a) and (b).

BUDGET ACT OF 1999

CHAPTER 50

S.B. No. 160

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State June 29, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

This bill would make appropriations for support of state government for the 1999-2000 fiscal year.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

Item		Amount
Schedule:		
(1) Burbank-Glendale-Pasadena Airport Flight Path: Residential Acoustic Treatment Program	400,000	
(2) Hawaiian Gardens RDA and Chamber of Commerce: Computer Drop-In Center	200,000	
9210-117-0001—For local assistance; Local Government Financing, Local Services		620,000
Schedule:		
(1) Imperial County: Purchase of two ambulances	120,000	
(2) Ventura County: Assist in the funding of the construction of two job training centers at community colleges	500,000	
9210-118-0001—For local assistance, Local Government Financing		150,000,000
For allocation by the Controller to local jurisdictions pursuant to a statute enacted during the 1999–2000 Regular Session. Fifty percent of this appropriation shall be allocated to cities, counties, and city and counties on a per capita basis, and fifty percent of this appropriation shall be allocated to cities, counties, city and counties, and special districts pursuant to a statute which provides one-time Educational Revenue Augmentation Fund relief.		
9210-119-0001—For local assistance, Local Government Financing, LAFCO Study		1,800,000
Provisions:		
1. The funds appropriated in this item are for allocation by the Controller to the County of Los Angeles Local Agency Formation Commission for the purposes of conducting a succession study for the San Fernando Valley.		
9210-295-0001—For local assistance, Local Government Financing, for reimbursement, in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or of Section 17561 of the Government Code, of the costs of any new program or increased level of service of an existing program mandated by statute or executive order, State Controller		6,001,000
Schedule:		
(1) 98.01.048.675-Test Claims and Reimbursement Claims (Ch. 486, Stats. 1975)	2,955,000	

Item		Amount
(2)	98.01.064.186-Open Meetings Act Notices (Ch. 641, Stats. 1986).....	2,896,000
(3)	98.01.084.578-Filipino Employee Surveys (Ch. 845, Stats. 1978).....	0
(4)	98.01.088.981-Lis Pendens (Ch. 889, Stats. 1981).....	0
(5)	98.01.098.084-Proration of Fines and Court Audits (Ch. 980, Stats. 1984).....	0
(6)	98.01.099.991-Rape Victim Counseling Ctr. Notices (Ch. 999, Stats. 1991).....	150,000
(7)	98.01.128.180-Involuntary Lien Notices (Ch. 1281, Stats. 1980).....	0
(8)	98.01.160.984-Domestic Violence Information (Ch. 1609, Stats. 1984).....	0
(9)	98.01.133.487-CPR Pocket Masks (Ch. 1334, Stats. 1987).....	0

Provisions:

1. Except as provided in Provision 2 below, allocations of funds provided in this item to the appropriate local entities shall be made by the State Controller in accordance with the provisions of each statute or executive order that mandates the reimbursement of the costs, and shall be audited to verify the actual amount of the mandated costs in accordance with subdivision (d) of Section 17561 of the Government Code. Audit adjustments to prior year claims may be paid from this item. Funds appropriated in this item may be used to provide reimbursement pursuant to Article 5 (commencing with Section 17615) of Chapter 4 of Part 7 of Division 4 of Title 2 of the Government Code.
2. Pursuant to Section 17581 of the Government Code, mandates identified in the appropriation schedule of this item with an appropriation of $0 and included in the language of this provision are specifically identified by the Legislature for suspension during the 1999–00 fiscal year:
   (a) Filipino Employee Surveys (Ch. 845, Stats. 1978)
   (b) Lis Pendens (Ch. 889, Stats. 1981)
   (c) Proration of Fines and Court Audits (Ch. 980, Stats. 1984)

Item

(d)

(e)

(f)

3. If pr C ne ar ot be nc tc w sc h

9620-00 Func for a Prov

1. T S e t C r r t a s

2. I r t a p t f i l l

9625-0(Go me

Item	Amount
(d) Involuntary Lien Notices (Ch. 1281, Stats. 1980)	
(e) Domestic Violence Information (Ch. 1609, Stats. 1984)	
(f) CPR Pocket Masks (Chapter 1334, Stats. 1987)	
3. If any of the scheduled amounts are insufficient to provide full reimbursement of costs, the State Controller may, upon notifying the Director of Finance in writing, augment those deficient amounts from the unencumbered balance of any other scheduled amounts therein. No order may be issued pursuant to this provision unless written notification of the necessity therefor is provided to the chairperson of the committee in each house which considers appropriations and the Chairperson of the Joint Legislative Budget Committee or his or her designee.	
9620-001-0001—For Payment of Interest on General Fund loans, upon order of the Director of Finance, for any General Fund loan	84,100,000
Provisions:	
1. The Director of Finance, the Controller, and the State Treasurer shall satisfy any need of the General Fund for borrowed funds in a manner consistent with the Legislature's objective of conducting General Fund borrowing in a manner that best meets the state's interest. The state fiscal officers may, among other factors, take into consideration the costs of external versus internal borrowings and potential impact on other borrowings of the state.	
2. In the event that interest expenses related to internal borrowing exceed the amount appropriated by this item, there is hereby appropriated any amounts necessary to pay the interest. Funds appropriated by this item shall not be expended prior to 30 days after the Department of Finance notifies the Joint Legislative Budget Committee of the amount(s) necessary or not sooner than such lesser time as the Chairperson of the Joint Legislative Budget Committee may determine.	
9625-001-0001—For Interest Payments to the Federal Government arising from the federal Cash Management Improvement Act of 1990	15,200,000

[No. B105801. Second Dist., Div. Two. Sept. 5, 1997.]

THE PEOPLE, Plaintiff and Respondent, v.
JULIO C. BUSTAMANTE, Defendant and Appellant.

SUMMARY

In a court trial, defendant was convicted of a felony violation of Pen. Code, § 113 (manufacture or sale of false government document to conceal true citizenship or resident alien status of another person), and the court also found true an allegation that defendant had served a prison sentence within the last five years (Pen. Code, § 667.5, subd. (b)). Prior to trial, the court denied defendant's motion to dismiss the information (Pen. Code, § 995) made on the ground that the Pen. Code, § 113, violation should have been charged as a misdemeanor. The Legislature's version of the statute defines a misdemeanor, but the later-enacted initiative version of Pen. Code, § 113, contained in Prop. 187, defines a felony. In denying defendant's motion, the court found that the later version prevailed. (Superior Court of Los Angeles County, No. LA024066, Sandy R. Kriegler, Judge.)

The Court of Appeal affirmed. It held that the initiative version of Pen. Code, § 113, prevailed. The two versions cannot be harmonized so as to create a wobbler to be prosecuted as a felony or a misdemeanor at a trial court's discretion. Although the initiative version does not clearly set forth the specific intent requirement contained in the Legislature's version, the initiative version covers all the conduct covered in the other version, prohibits a broader range of conduct, and punishes more severely. One cannot commit a violation of the Legislature's version without also violating the initiative, and this inconsistency makes concurrent operation of the two versions impossible. Furthermore, the voter material concerning Prop. 187 supports a conclusion that the intent was to create a new felony. Thus, since the two versions are inconsistent and incompatible, the initiative version prevails as the later-enacted statute. (Opinion by Ito, J.,* with Fukuto, Acting P. J., and Zebrowski, J., concurring.)

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

HEADNOTES

Classified to California Digest of Official Reports

(1a-1c) **Records and Recording Laws § 24—Offenses—Offering False Instrument for Record—Manufacture or Sale of False Government Document to Conceal True Citizenship—As Felony or Misdemeanor: Aliens' Rights § 13—Immigration, Exclusion, and Deportation.**—In a prosecution for felony violation of Pen. Code, § 113 (manufacture or sale of false government document to conceal true citizenship or resident alien status of another person), the trial court properly denied defendant's motion to dismiss the information, made on the ground that the violation should have been charged as a misdemeanor. The Legislature's version of § 113 defines a misdemeanor, but the later-enacted initiative version of § 113, contained in Prop. 187, defines a felony. The court properly found that the initiative version prevailed. The two versions cannot be harmonized so as to create a wobbler to be prosecuted as a felony or a misdemeanor at a trial court's discretion. Although the initiative version does not clearly set forth the specific intent requirement contained in the Legislature's version, the initiative version covers all the conduct covered in the other version, prohibits a broader range of conduct, and punishes more severely. One cannot commit a violation of the Legislature's version without also violating the initiative, and this inconsistency makes concurrent operation of the two versions impossible. Furthermore, the voter material concerning Prop. 187 supports a conclusion that the intent was to create a new felony. Thus, since the two versions are inconsistent and incompatible, the initiative version prevails as the later-enacted statute.

[See 2 Witkin & Epstein, Cal. Criminal Law (2d ed. 1988) § 722A.]

(2) **Initiative and Referendum § 6—State Elections—Initiative Measures.**—The rules of statutory construction are the same whether applied to the California Constitution or a statutory provision. Also, the same rules of interpretation should apply to initiative measures enacted as statutes.

(3) **Statutes § 16—Repeal—By Implication.**—For purposes of statutory construction, the various pertinent sections of all the codes must be read together and harmonized if possible. However, when a later statute supersedes or substantially modifies an earlier law but without expressly referring to it, the earlier law is repealed or partially repealed by implication. The courts assume that in enacting a statute the Legislature was aware of existing, related laws and intended to maintain a

consistent body of statutes. Thus, there is a presumption against repeals by implication; they will occur only where the two acts are so inconsistent that there is no possibility of concurrent operation, or where the later provision gives undebatable evidence of an intent to supersede the earlier. The courts are bound to maintain the integrity of both statutes if they may stand together.

(4) **Statutes § 52—Construction—Conflicting Provisions.**—Where two laws on the same subject, passed at different times, are inconsistent with each other, the later act prevails.

COUNSEL

Jeralyn Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Carol Wendelin Pollack, Assistant Attorney General, James W. Bilderback and Gustavo Gomez, Deputy Attorneys General, for Plaintiff and Respondent.

OPINION

ITO, J.*—

DUELING PENAL CODE[1] SECTIONS

The California Legislature enacted Penal Code section 113 (misdemeanor section 113), signed by the Governor on September 15, 1994, filed with the Secretary of State on September 16, 1994, and effective on November 30, 1994:[2]

"(a) Any person who manufactures or sells any false government document with the intent to conceal the true citizenship or resident alien status of another person is guilty of a *misdemeanor* and shall be punished by imprisonment in a county jail for one year. Every false government document that

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

[1]All further statutory references are to the Penal Code unless otherwise noted.

[2]Statutes 1993-1994, First Extraordinary Session 1994, chapter 17, section 1; see California Constitution, article IV, section 8, subdivision (c): ". . . and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed."

is manufactured or sold in violation of this section may be charged and prosecuted as a separate and distinct violation, and consecutive sentences may be imposed for each violation.

"(b) A prosecuting attorney shall have discretion to charge a defendant with a violation of this section or any other law that applies.

"(c) As used in this section, 'government document' means any document issued by the United States government or any state or local government, including, but not limited to, any passport, immigration visa, employment authorization card, birth certificate, driver's license, identification card, or social security card." (Italics added.)

On November 8, 1994, the voters passed Proposition 187, which became effective November 9, 1994. This initiative created a second section 113 (felony section 113):

"Any person who manufactures, distributes or sells false documents to conceal the true citizenship or resident alien status of another person is guilty of a *felony*, and shall be punished by imprisonment in the state prison for five years or by a fine of seventy-five thousand dollars ($75,000)." (Italics added.)

PROCEDURAL HISTORY

Appellant Julio C. Bustamante (Bustamante) was charged by way of information with two counts: violations of sections 113, "False Government Documents Activity," and 12021, subdivision (a)(1), felon in possession of a firearm. The information as to Penal Code section 113 read as follows: "On or about May 8, 1996, in the County of Los Angeles, the crime of FALSE GOVERNMENT DOCUMENTS ACTIVITY, in violation of PENAL CODE SECTION 113, a *Felony*, was committed by . . . JOSE GARCIA CABRERA[3] . . . , who did willfully and unlawfully manufacture and sell false government documents, to wit: drivers license, social security, immigration and etc. with the intent to conceal the true citizenship and resident alien status of another person." (Italics added.)

Bustamante made a motion pursuant to section 995 to set aside the information, raising the issue of the "dueling 113's" and arguing that only the misdemeanor version should apply. The prosecution countered by arguing that the more recent statute, that enacted by initiative, was properly charged and supported by the evidence presented at the preliminary hearing.

[3]Bustamante originally gave his name to be Jose Garcia Cabrera.

The trial court concluded that the more recently enacted statute must prevail and accordingly denied the section 995 motion. Bustamante waived jury trial and was convicted by the court of the felony violation of section 113 and acquitted of the crime of being a felon in possession of a firearm. A special allegation that Bustamante had served a prison sentence within the last five years pursuant to section 667.5, subdivision (b) was also found to be true. Bustamante was sentenced to the state prison for the statutorily provided term of five years, plus an additional one year for the recent prior commitment to the state prison for a similar offense. Bustamante appeals. We affirm.

FACTUAL BACKGROUND

The facts are largely undisputed. Los Angeles Police Officer Kenneth Belt (Belt) was conducting an investigation into "paper mills," businesses engaged in the creation of counterfeit documents, particularly those relevant to immigration and citizenship matters. This investigation involved the use of undercover police officers who were videotaped by a commercial television news crew. On May 8, 1996, Belt and his fellow officers, along with the television news crew, went to the vicinity of Independence Avenue and Sherman Way in the San Fernando Valley section of the City of Los Angeles. Belt conducted a surveillance of the area for approximately an hour for the purpose of identifying likely document peddlers. Los Angeles Police Officer Joe Esquivel (Esquivel), acting in an undercover capacity, approached codefendant Jose Chavez (Chavez) and another individual identified only as Navarette. Esquivel was equipped with a concealed radio transceiver, allowing Belt to overhear his conversations with suspects in the field. Chavez and Navarette each made distinctive hand signals indicating they had "micas" for sale. "Mica" is a slang term for a United States Immigration and Naturalization Service identification card. Esquivel placed an order for a birth certificate and Social Security card with Chavez for an agreed price of $60. Chavez instructed Esquivel to write down the desired information[4] on a napkin, which was handed to Navarette. Esquivel was further instructed to return in approximately 40 minutes for the finished products and to make payment. Esquivel then left the location.

In the meantime, Belt observed Chavez hand the napkin to Bustamante. Los Angeles Police Officer Victor Martin (Martin), also undercover, followed Bustamante and observed him to enter an apartment house located at 7323 Millwood, whereupon Martin lost sight of Bustamante. Shortly thereafter Martin observed Bustamante and two other persons emerge from the

[4]Name desired, the two parents' names and date of birth.

apartment building, enter a vehicle and drive toward Sherman Way. Martin remained at the apartment house.

Belt observed Chavez and Bustamante enter a parking lot at Independence and Sherman Way in a blue Toyota vehicle and park. Chavez took what appeared to be documents out of his pocket and placed them in a nearby trash can. Navarette retrieved the items from the trash can and made contact with Esquivel. Esquivel inspected the birth certificate and Social Security card, and paid Navarette with three marked $20 bills. Esquivel then placed an order for a second Social Security card by giving Navarette a piece of paper with a name. Esquivel then left. Navarette handed this piece of paper to a person identified as codefendant Alberto Nunez (Nunez). Belt then observed Nunez to walk out of the parking lot area.

Back at the Millwood apartment, Martin then observed Bustamante to return in the same vehicle with the same two other persons, and to enter a particular apartment at 7323 Millwood. Martin observed the two other persons leave, with Bustamante remaining inside the apartment. Belt then observed Navarette and Chavez to reenter the parking lot in the same blue Toyota automobile, exit the car and walk to the vicinity of the trash can where Chavez placed an item in that same trash can. Belt then directed the surveilling and support officers to move in and to arrest the "paper mill" participants then present in the parking lot. Esquivel then went to the Millwood apartment and placed Bustamante under arrest. After securing Bustamante's written consent to search the premises, officers located evidence suggesting a "paper mill" operation: a typewriter, paper cutter, lamination device, forged birth certificates, motor vehicle ownership certificates and work authorization permits. The piece of paper with the name Esquivel requested for the second Social Security card was also found in the apartment. An edited videotape of many of these activities was played for the trial court.

CONTENTIONS ON APPEAL

(1a) Bustamante contends the trial court erred when it determined that the second, initiative-based, section 113 automatically took precedence over the statute passed by the Legislature, and that the two section 113's were intended to coexist. Bustamante urges this court to set aside the sentence imposed and return the matter to the trial court so that the superior court can examine the record and exercise its discretion whether to apply the misdemeanor rather than the felony version of section 113. We decline the invitation. We hold that the provisions of misdemeanor section 113 are inconsistent with those of felony section 113, and are not amenable to any reasonable harmonization that is in keeping with the intent of the voters. We further hold that under recognized principles of statutory construction the later enactment of felony section 113 operates as a repeal, albeit by implication, of misdemeanor section 113.

STATUTORY INTERPRETATION

(2)(See fn. 5.) It is helpful at this point to examine the applicable principles of statutory interpretation.[5] (3) "For purposes of statutory construction, the various pertinent sections of all the codes must be read together and harmonized if possible." (*Channell* v. *Superior Court* (1964) 226 Cal.App.2d 246, 252 [38 Cal.Rptr. 13]; *Select Base Materials* v. *Board of Equal.* (1959) 51 Cal.2d 640, 645 [335 P.2d 672]; *Cannon* v. *American Hydrocarbon Corp.* (1970) 4 Cal.App.3d 639, 648 [84 Cal.Rptr. 575].) However, as stated in *Sacramento Newspaper Guild* v. *Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41, 54-55 [69 Cal.Rptr. 480]: "When a later statute supersedes or substantially modifies an earlier law but *without expressly referring to it*, the earlier law is repealed or partially repealed by implication. The courts assume that in enacting a statute the Legislature was aware of existing, related laws and intended to maintain a consistent body of statutes. [Citations.] Thus there is a presumption against repeals by implication; they will occur only where the two acts are so inconsistent that there is no possibility of concurrent operation, or where the later provision gives undebatable evidence of an intent to supersede the earlier; the courts are bound to maintain the integrity of both statutes if they may stand together. [Citations.]" (Italics added.)

Can Misdemeanor Section 113 Be Harmonized With Felony Section 113?

(1b) Bustamante contends the "dueling 113's" can be harmonized, essentially creating an alternative misdemeanor/felony or "wobbler." Bustamante notes Proposition 187 added two new statutes, sections 113 and 114, which make the manufacture, distribution, sale and use of *all* false documents to demonstrate legal presence a felony criminal offense. Misdemeanor section 113 is a less inclusive offense, applying only to the manufacture or sale of a false *government* document with the intent to conceal the true citizenship or resident alien status of another person.

The Attorney General contends it is impossible to harmonize these statutes and that the later-enacted felony section 113 must prevail. Felony section 113 sanctions the manufacture, sale *and* distribution of *any* false document, not just government documents, while imposing a significantly higher penalty, five years in state prison, or a $75,000 fine. Felony section

[5]The rules of statutory construction are the same whether applied to the California Constitution or a statutory provision (*Winchester* v. *Mabury* (1898) 122 Cal. 522, 527 [55 P. 393]), and "[t]he same rules of interpretation should apply to initiative measures enacted as statutes." (*Sanders* v. *Pacific Gas & Elec. Co.* (1975) 53 Cal.App.3d 661, 672 [126 Cal.Rptr. 415].)

113 does not contain a clearly delineated requirement of any specific intent,[6] making the crime's elements significantly different from misdemeanor section 113 which requires ". . . the intent to conceal the true citizenship or resident alien status of another person." (misdemeanor section 113.) The Attorney General notes that companion section 114 created by Proposition 187 makes it a felony to *use* false documents to conceal evidence of true citizenship or resident alien status, indicating an intent to implement a more comprehensive plan to deal with this aspect of the impact of illegal immigration.

The main problem with trying to harmonize the "dueling 113's" is that felony section 113 covers all the conduct covered in misdemeanor section 113, and more. The reach of felony section 113 is broader in the conduct it prohibits, and the sentencing impact much, much more severe. One cannot commit a violation of misdemeanor section 113 without also running afoul of the broader felony statute. This inconsistency makes concurrent operation of these two statutes impossible.

Intent of the Drafters

Bustamante argues: "Logic dictates that the members of the [L]egislature were aware of the provisions of Proposition 187 at the time they were drafting [m]isdemeanor section 113. Few persons in the state were not." Examination of the legislative history of misdemeanor section 113 and Proposition 187 could logically lead to a contrary conclusion. Our "dueling 113's" appear to have been born from separate yet parallel universes. The legislative history of misdemeanor section 113 does not include mention of Proposition 187 or the felony section 113. The voter's pamphlet presentation of Proposition 187 does not contain mention of Senate Bill No. 29X, 1994 First Extraordinary Session, or misdemeanor section 113. There appears to be no factual basis in the record from which one might conclude that the Legislature or the authors of Proposition 187 were conscious or aware of the other's efforts.

The Attorney General argues the tougher and more comprehensive provisions included in Proposition 187 indicate the voters' intent to supersede the lesser provisions of misdemeanor section 113. This position, however, finds no factual support in the voters pamphlet, which contains no reference to misdemeanor section 113.

[6]The language of felony section 113 is somewhat ambiguous: "Any person who manufactures, distributes or sells false documents *to conceal* the true citizenship or resident alien status of another person is guilty of a felony. . . ." (Italics added.) Query whether the required purpose "to conceal" is a poorly worded specific intent requirement. The cautious trial court might be well advised to treat this as a specific intent crime.

The ballot pamphlet description of Proposition 187 states: "**New Crimes for Making or Using False Documents** [¶] The initiative *creates two new state felonies*[7] for manufacture or use of false documents to conceal true immigration or citizenship status. The penalties for these crimes would be prison terms of five years or fines of up to $75,000 (for manufacturing) or up to $25,000 (for use). The manufacture or use of false immigration or citizenship documents currently are federal crimes. Forgery of state documents, such as driver's licenses, or obtaining them by fraud is currently a state crime." (Ballot Pamp., Gen. Elec. (Nov. 8, 1994), p. 52, italics added.) This language does, however, support the conclusion that it was the clear intent of the authors of Proposition 187 to create two new state felonies, which points towards the precedence of felony section 113.

The Subsequent Statute Must Prevail

(4) Where two laws on the same subject, passed at different times, are inconsistent with each other, the later act prevails. (*County of Ventura* v. *Barry* (1927) 202 Cal. 550, 556 [262 P. 1081]; *People* v. *Dobbins* (1887) 73 Cal. 257, 259 [14 P. 860]; see also Gov. Code, § 9605.)

(1c) Having determined misdemeanor section 113 inconsistent and incompatible with felony section 113, we hold the later-enacted statute, felony section 113, repeals misdemeanor section 113.

DISPOSITION

The judgment and sentence imposed by the trial court are affirmed.

Fukuto, Acting P. J., and Zebrowski, J., concurred.

Appellant's petition for review by the Supreme Court was denied December 17, 1997.

[7]Companion section 114 reads as follows: "Any person who uses false documents to conceal his or her true citizenship or resident alien status is guilty of a felony, and shall be punished by imprisonment in the state prison for five years or by a fine of twenty-five thousand dollars ($25,000)."

*466 83 Cal.Rptr.2d 466

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1999 Daily Journal D.A.R. 3097

CARMEL VALLEY FIRE PROTECTION DISTRICT et al., Plaintiffs and Appellants,
v.
STATE OF CALIFORNIA et al., Defendants and Respondents.

No. B113383.

Court of Appeal, Second District, Division 1, California.

March 31, 1999.

Review Granted June 30, 1999.

Fire protection district filed petition for ordinary and administrative mandate and a complaint for declaratory relief, requesting determination that state was obligated to reimburse it for funds it had spent to comply with executive orders setting minimum requirements for firefighters' protective clothing and equipment. The Superior Court, Los Angeles County, No. BS041545, Robert E. O'Brien, J., entered judgment against district, and district appealed. The Court of Appeal, Vogel, J., held that statute suspending local governmental agencies' compliance with the executive orders violated separation of powers doctrine.

Reversed and remanded with directions.

*467 [70 Cal.App.4th 1527] William D. Ross and Carol B. Sherman, Los Angeles, for Plaintiffs and Appellants.

Daniel E. Lungren, Attorney General, Linda A. Cabatic, Senior Assistant Attorney General, Marsha A. Bedwell, Supervising Deputy Attorney General, and Allen Sumner, Senior Assistant Attorney General, for Defendant and Respondent State of California.

Camille Shelton, Staff Counsel, Commission on State Mandates, for Defendant and Respondent Commission on State Mandates.

MIRIAM A. VOGEL, J.

The legislative prerogative is to declare public policy and to provide the ways and means of its accomplishment. We hold in this case that when the Legislature has accomplished that purpose by the enactment of a comprehensive statutory scheme enabling a statewide department (part of the executive branch) to adopt regulations to be enforced by administrative officers exercising substantial discretion, the separation of powers doctrine precludes the Legislature's exercise of supervisorial control or of some sort of veto power over the manner in which that discretion is exercised.

BACKGROUND

The California Occupational Safety and Health Act of 1973 (Cal/OSHA, Stats.1973, ch. 993, §§ 1-107, pp.1915-1955) was adopted to assure "safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health." (Lab.Code, § 6300.) To accomplish those goals, the Legislature gave the Department of Industrial Relations and its Division of Occupational Safety and Health "the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary to adequately enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment." (Lab.Code, § 6307.) The Director of the Department of Industrial Relations, and the members of the Occupational Safety and Health [70 Cal.App.4th 1528] Standards Board, including its Chair, are appointed by and serve at the pleasure of the Governor of the State of California. (Lab.Code, §§ 51, 140.)

In 1978, the Department adopted the Executive Orders that are the subject of this litigation. (

Cal.Code Regs., tit. 8, § 3401 et seq.; former 8 Cal. Admin. Code, § 3401 et seq.) Those Orders "establish minimum requirements for personal protective clothing and equipment for fire fighters" and impose on the fire fighters' employers the duty to "ensure the availability, maintenance, and use" of the required clothing and equipment. (Cal.Code Regs., tit. 8, § 3401, subds. (a), (b)(2).) As a result of these Executive Orders, all California employers, including local governmental agencies, are required to provide the designated clothing and equipment for their fire fighting employees. At the time the Executive Orders were adopted by the Department, the state had a statutory duty to reimburse local governmental entities for the costs they incurred in compliance with new state-mandated programs. (Former Rev. & Tax.Code, § 2207.) (FN1) Since the obligation imposed by the Executive Orders constituted a state-mandated program, the state was obligated to reimburse local governmental entities for the costs they incurred in compliance with the Executive Orders. (*Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 530-531, 533-537, 234 Cal.Rptr. 795 [*"Carmel Valley I"*].)

On November 6, 1979, the voters of California adopted Proposition 13 which, among ***468** other things, imposed a constitutional duty on the state to reimburse local governmental agencies for the costs they incurred by their compliance with specified state-mandated programs. To this end, article XIII B, section 6, of the California Constitution provides: "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...." In effect, Proposition 13 is a constitutional direction for "state subvention similar in nature to that required by the preexisting [statutory] provisions of [the] Revenue and Taxation Code...." (*Carmel Valley I, supra,* 190 Cal.App.3d at p. 543, 234 Cal.Rptr. 795.)

In the years following the adoption of Proposition 13, the state failed to appropriate funds to reimburse local governmental agencies for their costs of compliance with the Executive Orders. As a result, several fire protection [70 Cal.App.4th 1529] districts filed petitions for writs of mandate and complaints for declaratory relief in which they sought orders compelling the state to reimburse them for their expenditures of mandated costs. The districts prevailed, and in 1987 those judgments were affirmed by Division Five of our court. (*Carmel Valley I, supra,* 190 Cal.App.3d at pp. 533, 537-538, 234 Cal.Rptr. 795 [the costs incurred by local governmental agencies in compliance with the Executive Orders are state-mandated costs within the meaning of article XIII B, section 6, of the California Constitution].) For the next few years, the state complied with *Carmel Valley I* and reimbursed local governmental agencies for their compliance costs. But when the state started to run out of money (*Department of Personnel Administration -v. Superior Court* (1992) 5 Cal.App.4th 155, 163, 6 Cal.Rptr.2d 714 [during fiscal 1991 and 1992, the state faced an "unprecedented budgetary crisis" with a possible $14 billion shortfall]), the Legislature responded by enacting a statute that "suspends" compliance with state-mandated programs when specified conditions are met, Government Code section 17581 (Stats.1990, ch. 459, § 1, pp.2016-2017):

"(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 and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent 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 [on state mandates], 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 the 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...." (Stats.1998, ch. 681, § 5, italics added; subsequent references to "section 17581" are to that section of the Government Code as presently drafted.)

Section 17581 was applied to the Budget Act of 1992 (and thereafter to each succeeding Budget Act), and the Executive Orders were (and remain) [70 Cal.App.4th 1530] suspended under the plain language of section 17581. (See, e.g., Stats.1992, ch. 587; Stats.1993, ch. 55; Stats.1994, ch. 139.) At least some fire protection districts nevertheless continued to comply with the Executive Orders, but their requests to the state for reimbursement were denied.

In 1995, the Carmel Valley Fire Protection District submitted a claim to the Commission *469 on State Mandates, requesting a determination that the State was obligated to reimburse the District for the funds it spent in compliance with the Executive Orders. (FN2) The Commission denied the District's claim. The District then filed a petition for ordinary and administrative mandate and a complaint for declaratory relief, naming the state and the Commission as respondents and defendants. After a hearing, the trial court found that the clothing and equipment requirements imposed by the Executive Orders were validly suspended by section 17581 and that, as a result, the costs incurred by the District by providing those items were not state-mandated costs. The Carmel Valley Fire Protection District appeals from the judgment entered against it. (FN3)

DISCUSSION

[1] The District contends the Legislature violated the separation of powers doctrine by its enactment of section 17581, thereby "usurping the enforcement authority" of the Department of Industrial Relations. More specifically, the District contends the Legislature's adoption of Cal/OSHA and the legislative delegation to the Department of the power to adopt the Executive Orders amounted to a complete divestiture by the Legislature of the rights it might otherwise have had to do what it has attempted to do with section 17581. It follows, says the District, that the Legislature's enactment [70 Cal.App.4th 1531] of section 17581 is an unauthorized exercise of supervisorial power over the Department. We agree with the District.

[2] [3] It is the Legislature's prerogative to declare public policy and to provide the ways and means of its accomplishment. (*Lincoln Property Co. No. 41, Inc. v. Law* (1975) 45 Cal.App.3d 230, 234, 119 Cal.Rptr. 292.) To that end, it can enact, amend and repeal the laws of this state, including those that govern occupational safety and health. Indeed, the Legislature can repeal Cal/OSHA, in whole or in part. (*California Radioactive Materials Management Forum v. Department of Health Services* (1993) 15 Cal.App.4th 841, 872, 19 Cal.Rptr.2d 357.) Alternatively, the Legislature can accomplish an implied repeal of an administrative regulation by enacting a statute directly contrary to the obligations imposed by the regulation. (*State of Ga. by Dept. of Med. Assist. v. Heckler* (11th Cir.1985) 768 F.2d 1293, 1299 [an agency regulation which conflicts with a statute is without any legal effect].)

[4] But when the Legislature intrudes into an area occupied by the executive branch, the separation of powers doctrine will ordinarily preclude enforcement of the offending statute or act. (Cal. Const., art. III, § 3 ["The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution"].) The fundamental purpose of this separation is to check the extent of power exercisable by any one branch of government, "not to promote efficiency but to preclude the exercise of arbitrary power" and "to save the people from autocracy." (*Myers v. United States* (1926) 272 U.S. 52, 293, 47 S.Ct. 21, 71 L.Ed. 160, Brandeis, J., dissenting). (FN4)

*470 [5] [6] By reason of the separation of powers doctrine, the Legislature's power to declare public policy does not include the power to carry out its declared policies. That job belongs to the executive branch of government and its administrative agencies. (*California Radioactive Materials Management Forum v. Department of Health Services, supra,* 15 Cal.App.4th at pp. 870-871, 19 Cal.Rptr.2d 357; *Ray v. Parker* (1940) 15 Cal.2d 275, 291, 101 P.2d 665; *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 630-632, 268 P.2d 723.) Accordingly, the Legislature's grant of authority to the Department of Industrial Relations

to execute the provisions of Cal/OSHA by (among other [70 Cal.App.4th 1532] things) adopting the regulations necessary to carry out the legislatively declared public policy in favor of workplace safety (Lab.Code, § 6307) left the Legislature without the power to "exercise supervisorial control or to retain for itself some sort of 'veto' power over the manner of execution of the laws." (*California Radioactive Materials Management Forum v. Department of Health Services, supra,* 15 Cal.App.4th at p. 872, 19 Cal.Rptr.2d 357.) The Legislature must abide by its delegation of authority until that delegation is legislatively altered or revoked by a repeal of the enabling statute or by the enactment of an overriding law, or in some other lawful manner. (*Ibid.*)

In a slightly different context, the point is illustrated by *State Board of Education v. Levit* (1959) 52 Cal.2d 441, 343 P.2d 8. There, the Board of Education (acting pursuant to a then-existing constitutional mandate to select the textbooks used throughout the state) approved two science textbooks for use in California's elementary schools. The Legislature, with sufficient funds available, refused to pay for the selected books. The Board of Education applied to the courts for an order compelling payment, which our Supreme Court held should have been granted by the trial court. As *Levit* explains, the Legislature had the right to curtail curriculum and eliminate altogether the use of textbooks for all science classes, but once having decided that textbooks *would* be used for those classes, the Legislature had no power to interfere with the Board's selection of the books to be used. (*Id.* at pp. 465-466, 343 P.2d 8.) (FN5)

So viewed, section 17581 is nothing more than an impermissible attempt to exercise supervisorial control over the manner in which the Department of Industrial Relations executes the laws enacted by the Legislature. Whatever power the Legislature might have to repeal Cal/OSHA in whole or in part, or to enact an inconsistent statute that would accomplish an implied repeal of the Executive Orders, it does not have the power to cherry-pick the programs to be suspended--which is precisely what the Legislature has done by suspending the operation of only those "executive order[s], or portion [s] thereof, [that] ha[ve] been specifically identified by the Legislature in the Budget Act for the fiscal year as being [those] for which reimbursement is not provided for that fiscal year." (§ 17581, subd. (a)(2).) By suspending [70 Cal.App.4th 1533] operation of the Department's order that the specified items of clothing and equipment are necessary for the safety of fire fighters, the Legislature has attempted to exercise an unconstitutional veto power over the Department's administration of Cal/OSHA. This is *not* the same as enacting an inconsistent statute--that is, one to the effect that the items of clothing and equipment specified in the Executive Orders are *not* required for the safety of fire fighters. To the contrary, by allowing the *471. Executive Orders to remain in effect and authorizing local governmental entities to elect to enforce the Executive Orders and fund them at the local level (§ 17581, subd. (b)), the Legislature has conceded the merit of the Executive Orders while attempting to avoid the state's constitutionally imposed obligation to reimburse local governmental agencies for state-mandated costs (Cal. Const., art. XIII B, § 6). (Cf. *Consumer Energy, etc. v. F.E.R.C.* (D.C.Cir.1982) 673 F.2d 425, 474, summarily affd. 463 U.S. 1216, 103 S.Ct. 3556, 77 L.Ed.2d 1402 [it would be "anomalous in the extreme" to hold that the Legislature may not appoint the officials who make the rules but may enact a mechanism permitting effective legislative control over these officials' decisions].)

[7] We emphasize that the Legislature may retain direct control over a subject matter by enacting detailed rules of conduct to be administered without discretion by administrative officers, or it may provide broad policy guidance and leave the details to be filled in by administrative officers exercising substantial discretion. When it chooses the first alternative, it is in practical effect the administrative decisionmaker. Under the second alternative--as with Cal/OSHA and the Department of Industrial Relations--the Legislature is not the administrative decisionmaker and it may not, in the guise of legislation or otherwise, exercise a supervisory role over the decisionmaker appointed by another branch of government (in this case, the Governor).

Accordingly, section 17581 is constitutionally infirm as applied in this case and cannot be applied to the Executive Orders adopted by the Department of Industrial Relations. It follows that the Executive Orders have not been "suspended," that costs expended by the District in compliance therewith are state-mandated costs within the meaning of article

XIII B, section 6, of the California Constitution and *Carmel Valley I*, and that the state is not entitled to a judgment in its favor. We specifically do *not* order reimbursement, leaving the issues that were not decided below to be considered on remand, including (1) whether there are legal obstacles to the superior court's ability to order payment to the District for the years for which no appropriations were made for the reimbursement of the District for compliance with the Executive Orders, and (2) whether the appropriations issue is [70 Cal.App.4th 1534] affected by our decision that section 17581 is an impermissible legislative effort to override article XIII B, section 6, of the California Constitution. (FN6)

DISPOSITION

The judgment is reversed and the cause is remanded to the trial court with directions to vacate its judgment, to enter a partial judgment in favor of the District on the issue resolved by this appeal, and to hear and decide (1) the reimbursement issues and (2) the attorneys' fees issues. The District is awarded its costs of appeal.

ORTEGA, Acting P.J., and MASTERSON, J., concur.

FN1. As relevant, former section 2231, subdivision (a), of the Revenue and Taxation Code provided that "[t]he state shall reimburse each local agency for all 'costs mandated by the state,' as defined in Section 2207." (Former section 2231 of the Revenue and Taxation Code was repealed in 1986 and replaced by Government Code section 17561 [Stats.1986, ch. 879, §§ 6, 23, pp. 3041-3042, 3045].)

FN2. Among other things, the Commission on State Mandates (the successor to the Board of Control) determines whether a law or regulation constitutes a "state mandate." (Gov.Code, § 17500 et seq.; see also *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 62, fn. 5, 266 Cal.Rptr. 139, 785 P.2d 522.)

FN3. As in the trial court, the Carmel Valley Fire Prevention District is joined on appeal by several other fire protection districts: the Alpine Fire Protection District; the Bonita-Sunnyside Fire Protection District; the City of Glendale; the City of Anaheim; the Ventura County Fire Protection District; the San Ramon Valley Fire Protection District; the American Canyon Fire Protection District, a subsidiary district of the City of American Canyon; the Salida Fire Protection District; the West Stanislaus Fire Protection District; the Sacramento County Fire Protection District; the Humboldt No. 1 Fire Protection District; the Samoa-Peninsula Fire Protection District; and the Mammoth Lakes Fire Protection District. Unless the context suggests otherwise, our subsequent references to "the District" are intended to include all of these appellants. The respondents are the State of California and the Commission on State Mandates. Unless the context suggests otherwise, our subsequent references to "the state" are intended to include both respondents.

FN4. We reject the state's contention that "the separation of powers argument fails on its face" because "[r]espondents, all officers of the Executive Branch, obviously cannot infringe upon the power of the Executive Branch itself" by their adoption of the Budget Acts. The separation of powers violation occurs by the *Legislature's adoption of section 17581*, the statutory predicate for the state's ability to use the Budget Act to avoid reimbursement for state-mandated programs, not by reason of the state's refusal to reimburse the District.

*471 FN5. We emphasize our awareness of the difference between *Levit* and the present case. Indeed, virtually all of the cases cited in this opinion are distinguishable for one reason or another. For example, the primary issue in *California Radioactive* arose out of an attempt by the Senate Rules Committee to unilaterally affect a particular administrative decision. (*California Radioactive Materials Management Forum v. Department of Health Services, supra*, 15 Cal.App.4th 841, 19 Cal.Rptr.2d 357.) In short, although many of the cited cases involve the manner in which the legislative power was exercised rather than the effect of a particular statute, our view is that the same fundamental principles apply to the case now before us.

FN6. At this stage of these proceedings, we summarily reject the technical issues raised by the state in response to the District's appeal. The state

has failed to explain in its brief whether these issues (e.g., the statute of limitations) were preserved below or to advance any meaningful argument in support of the conclusory positions stated in the respondents' briefs. As far as the issue of attorneys' fees is concerned, it was not considered or decided by the trial court because the judgment rendered below was against the District. In light of our reversal, the issue of attorneys' fees will be before the trial court on remand. (Code Civ. Proc., § 1021.5.)

[No. B023919. Second Dist. Div. Six. Sept. 3, 1987.]

SANTA BARBARA COUNTY TAXPAYERS ASSOCIATION et al., Plaintiffs and Appellants, v.
COUNTY OF SANTA BARBARA et al., Defendants and Respondents.

SUMMARY

A taxpayers association brought an action against a county for injunctive and declaratory relief and mandate under §§ of Cal. Const., art. XIII B (limit on amount of tax revenues governments may spend), challenging the validity of the county's exclusion of retirement fund contributions from its annual appropriations. The trial court, after finding that § 5 applies only to retirement systems created after its enactment, and that the contributions constituted excludable debt service, sustained the county's demurrer without leave to amend and entered judgment for the county. (Superior Court of Santa Barbara County, No. 161950, William L. Gordon, Judge.)

The Court of Appeal reversed, reinstated the case, and awarded the association costs on appeal, holding that the county could not exclude the contributions from its annual appropriations. It held that the plain language of Cal. Const., art. XIII B, § 5, indicated that the contributions did not constitute excludable debt service; that, though the county had a duty under U.S. Const., art. I, § 10 (impairment of contracts clause), to protect the vested rights of its employees to receive retirement benefits, the electorate or the Legislature could remedy any problem caused by subjecting the contributions to the limitation; that the clear purpose of art. XIII B, namely, to limit expenditures from proceeds of taxes, indicated that it was to be applied prospectively; that the fact that the retirement board to which the contributions were made was totally distinct from the county was of no import; and that the word "retirement" in § 5 did not refer to retirement of debt. (Opinion by Gilbert, J., with Stone, P. J., and Abbe, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1a, 1b) **Counties § 15—Fiscal Matters—Limitation on Annual Appropriations—Employee Retirement Contributions—Exceptions—Debt Service.**—Under Cal. Const., art. XIII B (limit on government expenditure of tax revenues), a county could not exclude from its annual appropriations contributions to its employees' retirement fund, since they did not constitute excludable debt service (Cal. Const., art. XIII A, § 1, art. XIII B, § 9). The specific language of Cal Const., art. XIII B, § 5, stating that the contributions are subject to the limit prevails over the general provisions of § 9 since that interpretation accomplishes art. XIII B's purposes of limiting the growth of appropriations and the expenditure of taxes, notwithstanding the county's claims that § 5 merely defined when, and not what, contributions were subject to the limit, and that both §§ 5 and 9 were special provisions.

[See **Cal.Jur.3d**, Constitutional Law, § 167 et seq.; **Am.Jur.2d**, State and Local Taxation, § 122 et seq.]

(2) **Counties § 15—Fiscal Matters—Limitation on Annual Appropriations—Employee Retirement Contributions—Exceptions—Impairment of Vested Contract Rights.**—Under Cal. Const., art. XIII B, § 5, which limits the amount of tax revenues governments may spend, a county could not exclude from its annual appropriations contributions to its employees' retirement fund, notwithstanding U.S. Const., art. I, § 10 (impairment of contracts clause). Although the county had a duty to protect the vested rights of its employees, and such rights could be jeopardized by subjecting the contributions to the limit, the electorate could vote for additional funding, or the Legislature could act to ameliorate any resulting problem.

(3a, 3b) **Constitutional Law § 9—Power and Duty of Courts to Construe—Prospective and Retroactive Construction—Provision Limiting County's Annual Appropriations—Contributions to Employees' Retirement Fund as Subject to Limitation.**—Cal. Const., art. XIII B, § 5, which limits the amount of tax revenues a government entity may spend, is not to be applied prospectively for purposes of determining whether an entity's contributions to its employees' retirement fund are subject to the limitation. The language of the provision stating that a government entity "may establish such . . . retirement . . . funds,"

when viewed in the context of the entire provision, merely restates existing law and specifically identifies those funds contributions to which are subject to the limitation. The general rule that constitutional provisions are prospective is not applicable, since such a rule would eviscerate the provision's purpose of limiting expenditures from the proceeds of taxes, notwithstanding the remote possibility that an entity could spend more money if such contributions were included in its budget.

(4) **Statutes § 19—Construction—Background, Purpose, and Intent of Enactment—General Principles.**—For purposes of construing statutory provisions, the purpose of a provision must prevail over a strict, literal reading, unless the provision cannot be viewed any other way. The purpose of the provision can be ascertained by considering its objective, the evils that it is designed to prevent, the character and context of the provision in which the particular words appear, the public policy enunciated or vindicated, the social history that attends it, and the effect of the particular language when taking into account the entire enactment.

(5) **Counties § 15—Fiscal Matters—Limitation on Annual Appropriations—Employee Retirement Contributions—Exceptions—Retirement Board Distinct From County.**—Under Cal. Const., art. XIII B, which limits the amount of tax revenues governments may spend, a county could not exclude from its annual appropriations contributions to its employees' retirement fund, even though the retirement board to which the contributions were made was totally distinct from the county. Cal. Const., art. XIII B, § 5, specifically deemed the contributions as subject to the limitation, notwithstanding that contributions to redevelopment agencies to pay off bonded indebtedness of projects are excluded from the limitation to prevent the potential impairment of repayment.

(6) **Constitutional Law § 13—Construction of Constitutions—Language of Enactment—Provision Limiting Annual Appropriations of Governments—"Retirement" Contributions.**—The word "retirement" in Cal. Const., art. XIII B, § 5, which provides that a government entity may establish retirement or similar funds, but that contributions to such funds, to the extent they are derived from the proceeds of taxes, are appropriations subject to annual limitations, does not refer to the retirement of debt.

COUNSEL

Ronald A. Zumbrun, Anthony T. Caso and Jonathan M. Coupal for Plaintiffs and Appellants.

Kenneth L. Nelson, County Counsel, and Don H. Vickers, Deputy County Counsel, for Defendants and Respondents.

Schwartz, Steinsapir, Dohrmann & Sommers, Michael R. Feinberg and Terri A. Tucker as Amici Curiae on behalf of Defendants and Respondents.

OPINION

GILBERT, J.—Article XIII B of the California Constitution, also known as Proposition 4, limits the amount of tax revenues a government entity may spend. Section 5 states, in pertinent part: "Each entity of government may establish . . . retirement . . . funds . . . . Contributions to any such fund . . . shall . . . constitute appropriations subject to limitation . . ."[1]

Here we conclude that the section means what it says, and that a county may not exclude from its annual appropriations contributions to its employees' retirement fund.

FACTS

Beginning in 1985, the County of Santa Barbara had recalculated its 1978-1979 base year appropriations limit forward to reflect the exclusion of the county's contributions to the retirement fund.[2] The Santa Barbara County Taxpayers Association (TPA) et al. filed suit for injunctive and declaratory relief and mandate, challenging the county board of supervisors' (county) exclusion of those contributions from its appropriations to the 1986-1987 fiscal year budget.[3] The trial court held that section 5 applies

[1] Section 5 in its entirety reads: "Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation."

[2] See Government Code section 7902 on calculating appropriations limits.

[3] Other named defendants were the County of Santa Barbara and Kristi Johnson, in her official capacity as auditor-controller for the County of Santa Barbara.

only to retirement systems created after January 1, 1979, and that contributions to the retirement system constitute excludable debt service pursuant to *Carman* v. *Alvord* (1982) 31 Cal.3d 318 [182 Cal.Rptr. 506, 644 P.2d 192]. The court entered judgment against TPA after sustaining the county's demurrer without leave to amend.

TPA asserts that the plain language of section 5 requires the inclusion of such contributions as appropriations subject to the appropriations limit. We agree and reverse the judgment.

DISCUSSION

(1a) The county primarily relies on the holding in *Carman, supra,* that a special voter-approved tax levied to provide contributions to the Public Employees Retirement System (PERS) does not violate the 1 percent limitation on property taxes of article XIII A since those contributions service debt under that article. The county urges that since the definition of debt service in article XIII A is nearly identical to that in article XIII B,[4] and the purposes of the two articles are nearly the same, contributions to the county retirement system are not appropriations subject to limitation under section 5 of article XIII B. We do not find this reasoning persuasive.

The Supreme Court limited its holding in *Carman* to its facts and to article XIII A. (*Carman* v. *Alvord, supra,* 31 Cal.3d at p. 333; see also p. 326.) Unlike article XIII A, article XIII B plainly and specifically states that contributions to a governmental retirement fund, derived from the proceeds of taxes, "shall *for purposes of this Article* constitute appropriations subject to limitation . . . ." (Art. XIII B, § 5, italics added.) No such directive appears in article XIII A.

It is true that contributions to a governmental pension plan may fall under the general definition of debt service under both articles XIII A and XIII B (see art. XIII B, § 8, subd. (g); *Carman* v. *Alvord, supra,* 31 Cal.3d at pp. 325, 327-328, esp. fn. 8), and " '[a]ppropriations subject to limitation' . . . shall not include: [¶] (a) Debt service . . ." (see art. XIII B, § 9, subd. (a)). But this does not override the specific language of section 5 which states unconditionally that retirement contributions derived from proceeds

[4] Article XIII A, section 1 *excludes* from the 1 percent limitation on ad valorem taxes on real property *ad valorem taxes and special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978,* and on any bonded indebtedness for property improvement or acquisition approved thereafter by two-thirds of those voting on such debt. Article XIII B, section 9 *excludes debt service, defined in section 8, subdivision (g) as appropriations required to pay the cost of interest and redemption charges on indebtedness existing or legally authorized as of January 1, 1979,* or on bonded indebtedness approved by a majority of the electorate concerned, *from appropriations subject to limitation.*

of taxes constitute appropriations subject to limitation under article XIII B. Such specific constitutional provisions prevail over the general exclusion for debt service of section 9. (*Rose* v. *State of California* (1942) 19 Cal.2d 713, 723-724 [123 P.2d 505].)

We must interpret the provisions of article XIII B as a whole to effectuate its purposes of limiting the growth of appropriations and the expenditure of taxes. (*Marrujo* v. *Hunt* (1977) 71 Cal.App.3d 972, 977 [138 Cal.Rptr. 220]; *County of Placer* v. *Corin* (1980) 113 Cal.App.3d 443, 446 [170 Cal.Rptr. 232]; *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 61 [233 Cal.Rptr. 38, 729 P.2d 202].) The more reasonable interpretation of article XIII B that comports with these purposes is that the county's contributions to the employees' retirement system must be counted as appropriations subject to the limitation provisions of article XIII B. This interpretation prevails even though these contributions might also be considered debt service.

Vested Contractual Rights to Retirement Funds

(2) The county, of course, has a duty to pay pension funds as promised and earned. (*Carman* v. *Alvord, supra,* 31 Cal.3d at p. 325.) "By entering public service an employee obtains a vested contractual right to earn a pension on terms substantially equivalent to those then offered by the employer. [Citations.] On the employee's retirement after he has fulfilled pension conditions an immediate obligation arises to pay benefits earned. Earned benefits are deferred compensation (*Olson* [v. *Cory* (1980)] 27 Cal.3d [532] at p. 540 [178 Cal.Rptr. 568, 636 P.2d 532]) and, when payable, become a fixed indebtedness of the employer. [Fn. omitted.]" (*Ibid.*) "Pensions are a governmental obligation of great importance." (*Id.,* at p. 325, fn. 4.)

We are sympathetic to the county's desire to maintain the integrity of its pension plan and are mindful that to impair pension rights would violate the federal contracts clause. (U.S. Const., art. I, § 10, cl. 1; *Carman* v. *Alvord, supra,* 31 Cal.3d at pp. 328, 332-333.) The vested rights of secured creditors must be protected, as well. To prevent the impairment of these rights may require the county to redistribute expenditure allocations to meet these pension obligations.

Amicus, the California Teachers Association (CTA), argues that if we find that retirement funds are subject to the appropriations limit, government employees such as teachers will be left without income following retirement. We hope this ominous prognostication proves wrong. Nevertheless, we are constrained to follow the law rather than rule according to its

wisdom or folly. To the extent that CTA's calamitous prediction may be accurate, the electorate may vote for additional funding pursuant to article XIII B, section 4, or the Legislature may find a way to ameliorate the effects of this problem.

Limitation of Article XIII B to New or Changed Funds Only

(3a) The county contends that article XIII B should apply, if at all, only to newly created or changed funds. It claims that the language of section 5 mandates this conclusion. The first sentence of section 5 reads, "[e]ach entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper." The county argues that the limitations to appropriations were intended to apply prospectively only—to newly created or changed funds—to be consistent with the article's policy of excluding prior indebtedness from the appropriations limit (see §§ 8, subd. (g), 9, subd. (a)). CTA argues that the words "may establish" and "shall deem reasonable and proper" indicate prospective application. It also argues that this language mandates that contributions to any listed fund which was in existence prior to the effective date of the initiative are exempt as appropriations subject to limitation. We disagree.

Proper statutory construction does not proceed in a vacuum. (2A Sutherland, Statutory Construction (3d ed. 1943) §§ 46.05, p. 90; 46.07, p. 110.) (4) One of the oldest and most fundamental canons of statutory construction is that once the purpose of the legislation has been ascertained, it must prevail over a strict, literal reading, unless the statute cannot be viewed any other way. (*Friends of Mammoth* v. *Board of Supervisors* (1972) 8 Cal.3d 247, 259 [104 Cal.Rptr. 761, 502 P.2d 1049]; *Gibbs* v. *City of Napa* (1976) 59 Cal.App.3d 148, 154-155 [130 Cal.Rptr. 382]; *Rushing* v. *Powell* (1976) 61 Cal.App.3d 597, 603-604 [130 Cal.Rptr. 110].) One ferrets out the legislative purpose of a statute by considering its objective, the evils which it is designed to prevent, the character and context of the legislation in which the particular words appear, the public policy enunciated or vindicated, the social history which attends it, and the effect of the particular language on the entire statutory scheme. (58 Cal.Jur.3d, Statutes, § 23, pp. 341-342; 2A Sutherland, *supra*, at § 57.03, p. 644; *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587 [128 Cal.Rptr. 427, 546 P.2d 1371].)

(3b) The county and CTA urge this court to adopt a literal, lexicographic interpretation of section 5 by dissecting the meaning of these particular words in the abstract. The first sentence of section 5 when viewed in the

context of article XIII B as a whole merely restates existing law and specifically identifies those funds to which contributions are subject to limitation. (*Friends of Mammoth* v. *Board of Supervisors, supra,* 8 Cal.3d at p. 260.)

CTA also urges us to follow the general rule that statutory and constitutional provisions have prospective application. If this rule were applicable here, only contributions to funds created or changed after 1978 would be subject to limitation. The vast majority of contributions to the funds listed in section 5 would remain outside the ambit of the initiative. As CTA acknowledges, this rule of prospective application applies only in the absence of a contrary intent. (*Mannheim* v. *Superior Court* (1970) 3 Cal.3d 678, 686-687 [91 Cal.Rptr. 585, 478 P.2d 17]; *In re Marriage of Bouquet, supra,* 16 Cal.3d 583, 587; 58 Cal.Jur.3d, *supra,* at p. 341.)

To apply section 5 prospectively would eviscerate the clear purpose of article XIII B—to limit expenditures from proceeds of taxes. We must avoid an interpretation which evades the purpose of the initiative. (*Freedland* v. *Greco* (1955) 45 Cal.2d 462, 467-468 [289 P.2d 463]; *In re O'Neil* (1977) 74 Cal.App.3d 120, 123 [141 Cal.Rptr. 338].) An interpretation which is repugnant to the purpose of the initiative would permit the very "mischief" the initiative was designed to prevent. (2A Sutherland, *supra,* at §§ 46.01, p. 74; 46.02, p. 81; 46.05, pp. 91-92; 57.04, p. 650.) Such a view conflicts with the basic principle of statutory interpretation, *supra,* that provisions of statutes are to be interpreted to effectuate the purpose of the law.

The county conceives of a situation in which the inclusion of retirement contributions as appropriations subject to limitation would enable it to increase spending. This could occur because article XIII B preserves the same spending level as its base year, making subsequent yearly adjustments for population and inflation. If retirement contributions increase at a slower rate than cost of living and population adjustments, the county would have more money to spend. If this were a common occurrence, we doubt the county would be before us. The remote possibility that a government entity may be able to spend more money if contributions to its employment retirement fund are included in its budget does not undermine the purpose of article XIII B, to limit government spending.

Relationship of Sections 5 and 9 of Article XIII B

(1b) The county's other arguments to avoid the application of section 5 are without merit. The county maintains that section 5 does not conflict with section 9. It claims that section 5 merely defines *when* contributions

become subject to the appropriations limit, rather than defining *what* funds are subject to that limit. In making this statement, the county suggests, hypothetically, that contributions in the nature of section 9 debt service might be placed in some of the funds listed in section 5 without changing the character of those contributions.

Section 5 does more than tell us that contributions are subject to limitation in the year of contribution. It also tells us that all government contributions to the specifically listed funds, which are derived from the proceeds of taxes, are appropriations subject to limitation. To the extent such contributions might be considered to be within the ambit of section 9, a conflict would exist with section 5. The more specific language of section 5 controls. (*Rose* v. *State of California*, *supra*, 19 Cal.2d at pp. 723-724.)

The county contends that the rule that specific provisions prevail over general ones does not apply here since both sections 5 and 9 are special provisions. We find no merit to this unsupported proposition.

Recipient Retirement Board as Distinct From County

The County Employees Retirement Law of 1937, under which Santa Barbara County operates, allowed for the establishment of retirement boards which are independent from counties. (*Traub* v. *Board of Retirement* (1983) 34 Cal.3d 793, 798-799 [195 Cal.Rptr. 681, 670 P.2d 335]; and see Gov. Code, § 31450 et seq.) *Traub* held that a Workers' Compensation Appeals Board determination is not binding on a retirement board, for purposes of res judicata, because of the lack of privity between the county and the board, and because the control, custody and expenditure of the system's funds are the province of the board of retirement. (5) By analogy, the county argues that because the retirement board to which the contributions are made is totally distinct from the county, those contributions are not subject to limitation. The analogy is flawed. The case at hand concerns appropriations, not determinations regarding expenditures. It does not follow that because the retirement board is distinct and independent from the county, the county's appropriations to that system are not subject to limitation for purposes of article XIII B.

The statutorily mandated county contributions to the retirement system are specifically deemed appropriations subject to limitation under sections 5 and 8 of article XIII B. These contributions are obligations of the county which are part of the county budget adopted by the county board of supervisors. (Gov. Code, §§ 31586, 31581, 31453, 31454.)

The county's citation to *Bell Community Redevelopment Agency* v. *Woosley* (1985) 169 Cal.App.3d 24 [214 Cal.Rptr. 788], to suggest that contributions to the retirement fund have no appropriations limit and that section 5 is inapplicable to the distinct retirement board, is inapposite. The funding of a redevelopment agency is unlike retirement system funding under the 1937 County Employees' Retirement Law. Redevelopment agencies acquire their funding in various ways, which include outright grants, borrowed funds, and bonding indebtedness, according to the particular needs and resources existent for a given project. (*Id.*, at p. 27.) To the extent that contributions of available tax increments are distributed to a redevelopment agency to pay off bonded indebtedness of such projects, those contributions fall within the specific mandate of section 7 of article XIII B prohibiting the potential impairment of repayment of bonded indebtedness. (*Id.*, at p. 31.)

"Retirement" as Meaning Retirement of Debt

(6) The county suggests that this court consider the possibility that the word "retirement" in section 5 was meant to refer to retirement of debt. There is no merit to this suggestion which urges a strained interpretation of a word whose meaning in context is plain and clear.

The judgment is reversed and the action is reinstated. Appellants are awarded costs on appeal.

Stone, P. J., and Abbe, J., concurred.

A petition for a rehearing was denied October 1, 1987, and the opinion was modified to read as printed above. Respondents' petition for review by the Supreme Court was denied November 18, 1987. Panelli, J., was of the opinion that the petition should be granted.

FAMILY LAW SECTION
THE STATE BAR OF CALIFORNIA

TO: LARRY DOYLE, Chief Legislative Counsel

FROM: Tracey Jensen

DATE: March 4, 1999

RE: AB 403 (Romero)

SECTION POSITION:

Position Recommended: SUPPORT as amended
Date Position Recommended: February 28, 1999
Executive Committee Vote: Ayes: 14 Noes: 0 Abstentions: 0

ANALYSIS

(1) SUMMARY OF EXISTING LAW

Existing law establishes procedures for the prevention of domestic violence and provides both civil and criminal sanctions for acts of domestic violence.

(2) CHANGES TO EXISTING LAW PROPOSED BY THIS BILL

This bill would require each state and law enforcement agency to timely provide a copy of a report regarding domestic violence to the victim upon request. If the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement shall be made pursuant to California statutory provisions.

(3) ANALYSIS OF PROPOSED CHANGES

This bill would require law enforcement agencies to provide domestic violence survivors with a copy of a domestic violence report regarding an incident of abuse against themselves at no cost and within a reasonable period of time. The state may be required to reimburse local law enforcement agencies for any related costs pursuant to the California Constitution and statutory provisions.

(4) REASONS FOR SUPPORT

Law enforcement reports involving domestic violence are of great import to a victim seeking civil and/or criminal sanctions against the perpetrator. Such reports are also used by victims seeking citizenship through the federal Violence Against Women Act and compensation and other services through California's Victim-Witness program. Domestic violence survivors would receive such reports at no cost and within a reasonable period of time whereas now they must obtain the reports on their own and pay any associated costs. Domestic violence survivors fleeing abuse should not have to incur the cost and inconvenience of obtaining such reports.

(5) PROPOSED AMENDMENTS

Please indicate that any authorized agent may receive a report on behalf of the victim. Oftentimes, domestic violence survivors flee to a shelter or other confidential location and may not be able to, or may not wish to further endanger themselves by, receiving mail at their present residence.

(6) GERMANENESS

Issues concerning the prevention of domestic violence are of concern to family law attorneys and fall within the special expertise, training, and experience of the Family Law Section.

Sincerely,

Tracey Jensen, Member
Family Law Section Executive Committee

cc: Robert C. Wood, Section Chair
Thomas H. Frankel, Legislative Chair
John de Ronde, Assistant Legislative Chair and Chair, Domestic Violence North
Linda N. Wisotsky, Chair, Custody & Visitation South
Aleta Beaupied, Chair, Custody & Visitation North
Mary Wannarka, Section Contact
Paul S. Hohokian, Board of Governors Liaison
Valerie A. Miller, Board of Directors Liaison
David Long, Director of Research, State Bar of California
Office of General Counsel, State Bar of California

STATE OF CALIFORNIA
DEPARTMENT OF FINANCE
915 L STREET
SACRAMENTO, CA 95814-3706

EXHIBIT B

June 16, 2000

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of May 18, 2000 the Department of Finance has reviewed the test claim submitted by the Los Angeles County (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 1022, Statutes of 1999, (AB 403, Romero), are reimbursable state mandated costs (Claim No. CSM-99-TC-08 "Crime Victim's Domestic Violence Incident Reports"). Commencing with page 1, of the test claim, claimant contends that the addition of Family Code Section 6228 by Chapter 1022/99 has resulted in new duties for law enforcement agencies, which it asserts are reimbursable state mandates.

Family Code Section 6228 requires that state and local law enforcement agencies shall provide one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request, without charging a fee. In addition, a copy of a domestic violence incident report face sheet or incident report shall be made available during regular business hours to a victim of domestic violence within a specified time frame. This statute also applies to requests for face sheets or report made within five years from the date of completion of the domestic violence incidence reports.

As the result of our review, we have concluded that the statute will result in costs mandated by the State. If the Commission reaches the same conclusion at its scheduled June 29, 2000 hearing on the matter, the nature and extent of the specific activities required of Los Angeles County can be addressed in the parameters and guidelines which will then have to be developed for the program.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your May 18, 2000 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

J. W. Mills
for

S. Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF JAMES A. FOREMAN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-99-TC-08

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.

2. We concur that the Chapter No. 1022, Statutes of 1999, (AB 403, Romero) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

3. Attachment B is a true copy of Finance's analysis of AB 403 prior to its enactment as Chapter No. 1022, Statutes of 1999, (AB 403, Romero).

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.

June 16, 2000
at Sacramento, CA

James A. Foreman
James A. Foreman

PROOF OF SERVICE

Test Claim Name: "Crime Victim's Domestic Violence Incident Reports"
Test Claim Number: CSM-99-TC-08

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On June 16, 2000, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Paige Vorhies
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

DMG-MAXIMUS
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Auditor-Controller's Office
Attention: Leonard Kaye
500 West Temple Street, Room 603
Los Angeles, CA 90012

Mr. Steve Smith, CEO
Mandated Cost Systems
2275 Watt Ave, Ste C
Sacramento, CA 95825

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Mr. Paul Minney
Gerard & Vinson
1676 N. California Blvd., Ste 450
Walnut Creek, CA 94596

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 16, 2000 at Sacramento, California.

Abby Shawhan

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 29, 1999
POSITION: Oppose

BILL NUMBER: AB 403
AUTHOR: G. Romero

BILL SUMMARY: Domestic Violence: Reports to victims

This bill would require any state or local law enforcement agency to make one copy of a domestic violence incident report available to the victim upon request, as specified.

FISCAL SUMMARY

If the Commission on State Mandates determines that enactment of this bill creates a reimbursable state-mandated local program, then this bill would result in significant additional costs to the State. The "Crime and Delinquency in California, 1997" report issued by the Department of Justice indicates there were approximately 220,000 calls to law enforcement agencies in 1997 requesting assistance related to domestic violence. If we assume the cost of making a single copy of the police report available to every eligible victim of a domestic violence incident is two dollars (five to ten minutes of clerical staff time at $12 per hour), then enactment of AB 403 could result in one-time costs of approximately $2,200,000 (all ports for the previous five years, as authorized by the bill), and ongoing costs of approximately $440,000 annually ($2 × 220,000). We note that AB 403 would expressly prohibit the assessment of a fee for this service.

COMMENTS

Finance is opposed to this bill because it may result in significant one-time and ongoing costs to the State.

Under existing law, a victim of a domestic violence incident must request in writing that a copy of a domestic violence report be provided by mail. The author's office indicates that in certain cases, the length of time involved in this process can make it difficult for a domestic violence victim to establish a history of domestic violence in court in a timely manner when pursuing a protective or restraining order.

AB 403 would require a state and local law enforcement agency to make a copy of a domestic violence incident report available to a victim of the domestic violence upon request, within regular business hours and no later than two working days after the victim's request. If the law enforcement agency, for good cause and in writing, informs the victim of the reasons why the report is not available in a particular case, the report would be required to be made available no later than 10 days after the request is made. The bill would provide that no fee shall be charged for this service. The bill would require compliance with its provisions if a request is made within five years of the date of the domestic violence incident report.

Analyst/Principal	Date	Program Budget Manager	Date
(0212) J. Foreman	7/7/99	S. Calvin Smith	7-7-99
Todd Jerue for		J. W. Mkly	
Department Deputy Director		Original signed by Robert D. Miyashiro	Date JUL - 8 1999

Governor's Office: By: Date: 7/9/99 Position Noted ✓ Position Approved Position Disapproved

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the March 18, 1999 version include significant amendments which would do the following:

- Delete the proposed name for the enacted bill.
- Replace the proposed requirement that law enforcement agencies provide a copy of a domestic violence incident report with a requirement to make one copy available to the victim within two days of the victim's request, as specified.
- Require compliance with the bill's provisions for a request made within five years of the date of the domestic violence incident report.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1999-2000	FC 2000-2001	FC 2001-2002	Fund Code
0820/Justice	SO	No	See Fiscal Summary			0001
2720/CHP	SO	No	See Fiscal Summary			0001

ITEM 5
Crime Victims' Domestic Violence Incident Reports

EXHIBIT C:
Replace pages 270 – 276.

Adopted: February 26, 1998
File Number: CSM-96-362-01
Commission Staff
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PROPOSED STATEMENT OF DECISION

Penal Code Sections 13519 and 13730
Chapter 965, Statutes of 1995

Domestic Violence Training and Incident Reporting

Executive Summary

On December 18, 1997, the Commission approved the Staff Analysis of this test claim regarding Penal Code sections 13519 (Domestic Violence Training) and 13730 (Domestic Violence Incident Reporting).

Part I. Domestic Violence Training

The Commission determined that Penal Code section 13519, subdivision (e), imposed a new program upon local law enforcement agencies by requiring certain law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years.

However, in view of the statutory language stating that the instruction in question be funded from existing resources, the Commission continued its inquiry. The Commission found that local agencies do *not* incur increased training costs for the two hour domestic violence training update because the course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

Therefore, based on the evidence, the Commission concluded that Penal Code section 13519, subdivision (e), does not impose a reimbursable state mandated program upon local law enforcement agencies and denied this portion of the test claim.

Part II. Domestic Violence Incident Reporting

The Commission determined that Penal Code section 13730, subdivision (c), imposed a new program upon local law enforcement agencies by requiring agencies to include in their domestic violence incident report additional information regarding the use of alcohol and controlled substances by the alleged abuser, and any prior domestic violence response to the same address.

However, the Commission found that while this additional information must be included on the domestic violence incident report, the performance of this incident reporting activity is presently not state mandated because:

- Presently, the State Budget Act of 1997/98 makes the completion of the incident report itself *optional* and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

The Commission recognized that during the period from July 1, 1997 through August 17, 1997, and during subsequent "window periods" when the state operates without a budget, the original suspension of the mandate would not be in effect.

Accordingly, the Commission determined that for the *limited* window period from July 1, 1997 through August 17, 1997, the domestic violence incident reporting, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

The Commission further determined that in all subsequent "window periods" when the state operates without a budget, the domestic violence incident reporting program, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

Therefore, the Commission concluded the following:

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does *not* impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581.
- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for the *limited* window period from July 1, 1997 (the start of the new fiscal year) through August 17, 1997, when the State Budget Act made the incident reporting program optional under Government Code section 17581.
- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for all *subsequent* window periods from July 1 (the start of the new fiscal year) until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

Staff Recommendation

Based on the foregoing, Staff recommends that the Commission approve the attached Proposed Statement of Decision that determines that

- Penal Code section 13519, subdivision (e), does *not* impose a reimbursable state-mandated program upon local law enforcement agencies; and
- Penal Code section 13730, subdivision (c), does *not* impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Sections 13519 and 13730, as amended by Chapter 965, Statutes of 1995 And filed on December 27, 1996; By the County of Los Angeles, Claimant.	NO. CSM - 96-362-01 DOMESTIC VIOLENCE TRAINING AND INCIDENT REPORTING 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 January 29, 1998)

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on December 18, 1997, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles; Mr. Glen Fine, appeared for the Commission on Peace Officer Standards and Training; and Mr. James Apps and Mr. James Foreman appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Captain Dennis D. Wilson, Deputy Bernice K. Abram, and Ms. Martha Zavala.

At the 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.

PART I. DOMESTIC VIOLENCE TRAINING

Issue 1: Does the domestic violence continuing education requirement upon law enforcement officers under Penal Code section 13519, subdivision (e), impose a new program or higher level of service

upon local agencies under section 6 of article XIII B of the California Constitution?

The County of Los Angeles alleged that Penal Code section 13519, subdivision (e), as amended by Chapter 965, 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, article XIII B of the California Constitution. The statute which is the subject of this test claim is as follows:

> "(e) Each law enforcement *officer* below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence *shall complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed pursuant to subdivision (d).* The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature *not* to increase the annual training costs of local government." (Emphasis added.)

COMMISSION FINDINGS:

In order for a statute, which is the subject of a test claim, to impose a reimbursable state mandated program, the statutory language (1) must direct or obligate an activity or task upon local governmental entities, and (2) 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.[1]

The foregoing provisions require each law enforcement *officer* below the rank of supervisor, who is assigned to patrol duties and normally responds to domestic violence calls or incidents, to complete an updated course of instruction on domestic violence every two years. This course of instruction must be developed according to POST's standards and guidelines, which are described in subdivision (d) of section 13519. Although the statute imposes an express continuing education requirement upon individual officers and not local agencies, the last sentence of subdivision (e) indicates the Legislature's awareness of the potential impact of this training course upon local governments (i.e., "[i]t is the intent of the Legislature not to increase the annual training costs of local government.")

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[1] *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.

Thus, the Commission found this continuing education activity is imposed upon local agencies whose local law enforcement officers carry out a basic governmental function by providing services to the public. Such activity is not imposed on state residents generally.[2] In sum, the Commission found that the first requirement to determine whether the test claim legislation imposes state-mandated program is satisfied.

Second, subdivision (e) of section 13519 imposes a new requirement on certain law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. This training obligation was not required immediately prior to the enactment of subdivision (e). Instead, local law enforcement agencies were *encouraged*, but not required, to include periodic updates and training on domestic violence *as part of their advance officer training program only*. (Former Pen. Code § 13519, subd. (c).) Accordingly, the Commission found that the second requirement to determine whether the test claim legislation imposes a state mandated program is satisfied.

Third, the Commission found that subdivision (e) is state mandated because local agencies have no options or alternatives available to them and, therefore, the officers described in subdivision (e) must attend and complete the updated domestic violence training course from a POST-certified class.[3]

Based on the foregoing, the Commission found that section 13519, subdivision (e), imposes a new program upon local agencies.

Issue 2: Does section 13519, subdivision (e), impose costs mandated by the state upon local agencies which are reimbursable from the State Treasury?

The latter portion of Penal Code section 13519, subdivision (e), provides in pertinent part:

> ". . . . The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local governmental entities." (Emphasis added.)

Given the above statutory language, the Commission continued its inquiry to determine whether local law enforcement agencies incur any increased costs as a result of the test claim statute.

COMMISSION FINDINGS:

Government Code section 17514 defines *costs mandated by the state* as:

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[2] *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.

[3] *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 832 and 836.

". . . . [A]ny increased costs which a local agency . . . is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, . . . which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

If the claimant's domestic violence training course, under section 13519, subdivision (e), caused an increase in the total number of continuing education hours required for these certain officers, then the increased costs associated with the new training course are reimbursable as "costs mandated by the state" (subject to any offset from the receipt of any state moneys received for the costs incurred in attending and completing the subdivision (e) domestic violence training course).

On the other hand, if there is no overall increase in the total number of continuing education hours for these officers attributable to the subdivision (e) domestic violence training course, then there are no increased training costs associated with this training course. Instead, the subdivision (e) course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training.

Based on the evidence submitted by the parties, and the plain language of the test claim statute, the Commission found that local agencies incur *no* increased "costs mandated by the state" in carrying out the two hour domestic violence update training.

POST regulations provide that local law enforcement officers must receive at least 24 hours of Advanced Officer continuing education training every two years. Section 1005, subdivision (d), of Title 11, California Code of Regulations, states in pertinent part:

"Continuing Professional Training (Required).

"(1) Every peace officer below the rank of a middle management position as defined in section 1001 and every designated Level 1 Reserve Officer as defined in Commission Procedure H-1-2 (a) *shall satisfactorily complete the Advanced Officer Course of 24 or more hours at least once every two years after meeting the basic training requirement."*

"(2) The above requirement may be met by satisfactory completion of one or more Technical Courses totaling 24 or more hours, or satisfactory completion of an alternative method of compliance as determined by the Commission..."

"(3) Every regular officer, regardless of rank, may attend a certified Advanced Officer Course and the jurisdiction may be reimbursed."

"(4) Requirements for the Advanced Officer Course are set forth in the POST Administrative Manual, section D-2."

The evidence submitted by the parties reveals that the updated training is accommodated or absorbed within the 24-hour continuing education requirement provided in the above regulation.

POST Bulletin 96-2 was forwarded to local law enforcement agencies shortly after the test claim statute was enacted. The Bulletin specifically recommends that local agencies make the required updated domestic violence training part of the officer's continuing professional training. It does not mandate creation and maintenance of a separate schedule and tracking system for the required domestic violence training. To satisfy the training in question, POST prepared and provided local agencies with course materials and a two-hour videotape.

Additionally, the letter dated July 11, 1997, from Glen Fine of POST indicates POST's interpretation of the test claim statute that the domestic violence update training be included *within* the 24 hour continuing education requirement set forth above. Accordingly, the two-hour course may be credited toward satisfying the officer's 24-hour continuing education requirement.

The Commission disagreed with the claimant's contention that it is entitled to reimbursement as a result of the test claim statute since it cannot redirect funds for salary reimbursement from other non-funded POST training modules. The POST memorandum submitted by the claimant, dated July 6, 1993, reveals that the claimant has not received salary reimbursement for officer training since 1993, before the enactment of the test claim statute.

Accordingly, the Commission found that local agencies incur no increased costs mandated by the state in carrying out this two hour course because:

- *immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- the two hour domestic violence training update may be credited toward satisfying the officer's 24 hour minimum,
- the two hour training is *not* separate and apart nor "on top of" the 24 hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- of the 24 hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22 hour requirement by choosing from *the many elective courses* certified by POST.

In sum, the Commission found that local agencies do *not* incur increased training costs for the two hour domestic violence training update because the course is accommodated or absorbed by local law enforcement agencies within their existing resources available for training as spelled out in the test claim statute. The minimum POST requirement for continuing education for the officers in question *immediately before and after* the effective date of the test claim statute was and remains at 24 hours. Of the 24 hours, the Legislature requires that two out of the 24 must be an updated course on domestic violence certified by POST.

PART I CONCLUSION

Based on the foregoing evidence, the Commission concludes that Penal Code section 13519, subdivision (e), does not impose a reimbursable state mandated program upon local law enforcement agencies and denies this portion of the test claim.

PART II: DOMESTIC VIOLENCE INCIDENT REPORTING

Issue 1: Do the provisions of Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, impose a new program or higher level of service upon local agencies within the meaning of section 6, article XIII B of the California Constitution?

BACKGROUND:

Penal Code section 13730 was originally added by Chapter 1609, Statutes of 1984. At that time, the statute required each law enforcement agency to develop a domestic violence incident report. The 1984 statute provided the following:

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.
>
> (b) The Attorney General shall report annually to the Governor, the Legislature, and the public, the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.
>
> (c) *Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.*" (Emphasis added.)

Chapter 1609, Statutes of 1984, was the subject of a previous test claim (CSM-4222) approved by the Commission on January 22, 1987. The Parameters and Guidelines for Chapter 1609, Statutes of 1984, provided that the following costs were reimbursable:

(1) the "costs associated with the *development of a Domestic Violence Incident Report form* used to record and report domestic violence calls"; and

(2) costs incurred "for the *writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.*"

In 1993, the Legislature made minor nonsubstantive changes to section 13730 and amended subdivision (a) to include the second underlined sentence relating to the written incident report required under subdivision (c):

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. <u>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.</u> Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General." (Chapter 1230, Statutes of 1993.)

Since the Legislature required local law enforcement agencies to develop and complete the domestic violence incident report form in subdivision (c) under the 1984 legislation, the 1993 amendment to subdivision (a) merely *clarified* this reporting requirement, rather than mandating a new or additional requirement. The Commission further noted that a test claim has never been filed on Chapter 1230, Statutes of 1993, requesting that the amendment constitute a new program or higher level of service.

During fiscal years 1992/93 through 1996/97, the Legislature no longer mandated the incident reporting requirements set forth in Penal Code section 13730 pursuant to Government Code section 17581. Accordingly, it was optional for local law enforcement agencies to implement the domestic violence incident reporting activity during these fiscal years. The fiscal year 1997/98 budget continues the suspension, effective August 18, 1997. (Chapter 282, Statutes of 1997, Item 9210-295-0001, par. 2, pp. 587-588.)

In 1995, the Legislature amended Penal Code section 13730, subdivision (c), in Chapter 965, Statutes of 1995. Subdivision (c), as amended by Chapter 965, Statutes of 1995, provides the following:

> "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. A report shall include at least both of the following:

(1) A ***notation*** of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A ***notation*** of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim." (Underscored text added by Chapter 965, Statutes of 1995)

The County of Los Angeles alleged that Penal Code section 13730, subdivision (c), as amended by Chapter 965, 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, article XIII B of the California Constitution.

COMMISSION FINDINGS:

The Commission found that Penal Code section 13730, subdivision (c), obligates local law enforcement agencies to include in the domestic violence incident reports additional information relating to the use of alcohol or controlled substances by the abuser, and any prior domestic violence responses to the same address. This additional reporting activity is performed by local law enforcement agencies that carry out basic governmental functions by providing a service to the public. Such activities are not imposed on state residents generally.[4] Thus, the Commission found that the first requirement to determine whether a statute imposes a reimbursable state mandated program is satisfied.

Second, before the enactment of the test claim statute, local law enforcement agencies were required to develop and complete domestic violence incident reports. However, local agencies were *not* required to include in the report specific information relating to the alleged abuser's use of alcohol or controlled substances, or information relating to any prior domestic violence calls made to the same address.

Accordingly, the Commission found that Penal Code section 13730, subdivision (c), constitutes a new program by satisfying two of the requirements necessary to determine whether legislation imposes a reimbursable state mandated program.

The Commission's inquiry continued to determine whether the test claim legislation is state mandated for purposes of reimbursement from the State Treasury.[5] As previously indicated, the original statute, which required the development and completion of a

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[4] *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.

[5] *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 832 and 836.

domestic violence incident report was determined by the Commission to be a reimbursable state mandated program. However, this program was made optional by the Legislature under Government Code section 17581.

Issue 2: If Penal Code section 13730, as originally added by Chapter 1609, Statutes of 1984, is made optional by the Legislature pursuant to Government Code section 17581, are subsequent legislative amendments to section 13730 also made optional?

The County of Los Angeles contended that Chapter 965, Statutes of 1995, is not included in the Legislature's suspension of the original statute. The County contended that the chapters need to be addressed separately. The County further contended that Chapter 965, Statutes of 1995, is not automatically made optional by association with the original statute. Rather the determination of whether a statute is suspended is up to Legislature.

COMMISSION FINDINGS:

Government Code section 17581 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 XIIIB 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 17581 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.

The Commission determined that Penal Code section 13730, 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 and complete an incident report relating to all domestic violence calls.

However, during fiscal years 1992/93 through 1997/98, the Legislature specifically identified Chapter 1609, Statutes of 1984 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, Statutes of 1984. Both conditions set forth in section 17581 were met, i.e., (1) the Commission determined that Penal Code section 13730 of Chapter 1609, Statutes of 1984, imposed a state mandated program and (2) the Legislature identified Chapter 1609, Statutes of 1984, and appropriated zero funds. Thus, the domestic violence incident report program was optional and no longer state mandated. Notwithstanding, the Commission recognized that during the period from July 1, 1997 through August 17, 1997, and during subsequent periods when the state operates without a budget, the original suspension of the mandate would not be in effect.

The test claim statute (Chapter 965, Statutes of 1995) amends Penal Code section 13730 by requiring additional information to be contained within the domestic violence incident report. Since the development and completion of the incident report has been made optional by the Legislature pursuant to Government Code section 17581, the Commission inquired whether the additional requirements imposed by the test claim are also optional.

On its face, the 1997/98 State Budget Act does not identify Chapter 965, Statutes of 1995, as a suspended mandate. However, the Commission found that, in substance, the test claim legislation *is* affected by the Legislature's actions making the original test claim legislation optional.

The 1995 amendment to subdivision (c) of section 13730 requires information relating to the alleged abuser's use of alcohol or controlled substances, and any prior responses to the same address be *added to the domestic violence incident report form itself.* The Commission agreed that the additional notations required under the test claim statute constitute an additional activity. For this reason, the Commission found that the test claim statute constitutes a new program or higher level of service.

However, with the Legislature's use of the word "notation" in subdivision (c), the Commission disagreed that the 1995 amendment to section 13730 made the domestic violence incident report "very different" from what was required in 1984. The test

claim statute does not require a new or different report. It simply specifies the minimum content of the underlying report.

Therefore, the Commission found that the new requirements imposed by Chapter 965, Statutes of 1995, are *not* independent of the incident report as suggested by the claimant; rather, they are encompassed and directly connected to the underlying incident reporting program established by the Legislature in Chapter 1609, Statutes of 1984.[6]

The Commission further found that section 13730, subdivision (c), requires additional information to be included on the domestic violence incident report, the performance of domestic violence incident reporting is *not* state mandated because the development and completion of the report itself was made optional by the Legislature. In other words, since the development and completion of the incident report are not state mandated, then the new information to be included on the incident report is likewise not state mandated.

On the other hand, *if* a local agency voluntarily opts or elects to complete the incident report, then the additional information must be included on the report pursuant to the provisions of the test claim statute. In this respect, Chapter 965, Statutes of 1995, is not a meaningless and unnecessary law as suggested by the claimant.

Therefore, the Commission determined that the new additional information to the domestic violence incident report is not a reimbursable state-mandated program because:

- Presently, the State Budget Act of 1997/98 makes the completion of the incident report *optional* and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

Notwithstanding the foregoing, the Commission determined that for the *limited* window period from July 1, 1997 through August 17, 1997, the domestic violence incident reporting, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

The Commission further determined that in all subsequent "window periods" when the state operates without a budget, the domestic violence incident reporting program,

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[6] This test claim is to be distinguished from the previously decided test claim (September 25, 1997), entitled *Domestic Violence Arrest Policies and Standards*, where the Commission determined that the legislation in question imposed new and distinct activities and, therefore, was not affected by Government Code section 17581. In the *Domestic Violence Arrest Policies and Standards* test claim, the Legislature made optional the original requirement to develop, adopt and implement written policies for *response* to domestic violence calls pursuant to Government Code section 17581. The test claim legislation amended the statute adding the requirement to develop and implement *arrest* policies for domestic violence offenders, a new and distinct requirement not encompassed by the previously suspended requirement to develop response policies.

including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

PART II CONCLUSION

The Commission concludes that pursuant to section 6 of article XIII B of the California Constitution and section 17514 of the Government Code that:

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does not impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581.

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for the *limited* window period from July 1, 1997 (the start of the new fiscal year) through August 17, 1997, when the State Budget Act makes the incident reporting program optional.

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for all *subsequent* window periods from July 1 (the start of the new fiscal year) until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

EXHIBIT C

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
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SACRAMENTO, CA 95814
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March 6, 2003

Mr. Leonard Kaye
SB 90 Coordinator
County of Los Angeles
500 West Temple Street, Room 603
Los Angeles, California 90012

And Affected Parties and State Agencies (See Enclosed Mailing List)

Re: **Draft Staff Analysis and Hearing Date**
***Crime Victim's Domestic Violence Incident Reports*, CSM 99-TC-08**
Los Angeles County, Claimant
Penal Code Section 13730 and Family Code Section 6228
Statutes of 1984, Chapter 1609
Statutes of 1995, Chapter 965
Statutes of 1999, Chapter 1022

Dear Mr. Kaye:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **March 28, 2003**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is set for hearing **April 24, 2003,** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about April 11, 2003. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

If you have any questions on the above, please contact Camille Shelton at (916) 323-3562.

Sincerely,

Paula Higashi
Executive Director

Enc. Draft Staff Analysis and supporting authorities
cc. Mailing List (current mailing list attached)

MAILED: 3/6/03 INITIAL: VS
FAXED:
DATE:
CHRON:
FILE:
WORKING BINDER:

Tentative Hearing Date: April 24, 2003
J:/mandates/99-TC-08/DSA

DRAFT STAFF ANALYSIS

Penal Code Section 13730,
As Added and Amended by Statutes 1984, Chapter 1609, and Statutes 1995, Chapter 965

Family Code Section 6228,
As Added by Statutes 1999, Chapter 1022

Crime Victims' Domestic Violence Incident Reports (99-TC-08)

Executive Summary

STAFF ANALYSIS

Claimant

County of Los Angeles

Chronology

5/15/00	Claimant files test claim with Commission
5/18/00	Commission deems test claim complete
6/20/00	Department of Finance files comments on test claim

Background

This test claim has been filed on two statutes; Penal Code section 13730, as added in 1984 (Stats. 1984, ch. 1609) and amended in 1995 (Stats. 1995, ch. 965), and on Family Code section 6228, as added in 1999 (Stats. 1999, ch. 1022).

In 1987, the Commission approved a test claim filed by the City of Madera on Penal Code section 13730, as added by Statutes 1984, chapter 1609, as a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution (*Domestic Violence Information*, CSM 4222). The parameters and guidelines for *Domestic Violence Information* authorized 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."[1]

In fiscal year 1992-93, the Legislature, pursuant to Government Code section 17581, suspended Penal Code section 13730, as added by Statutes 1984, chapter 1609. With the suspension, the Legislature assigned a zero-dollar appropriation to the mandate and made the program optional.

In 1995, the Legislature amended Penal Code section 13730, subdivision (c). (Stats. 1995, ch. 965.) As amended, Penal Code section 13730, subdivision (c)(1)(2), required law enforcement agencies to include in the domestic violence incident report additional information relating to the use of alcohol or controlled substances by the abuser, and any prior domestic violence responses to the same address.

In February 1998, the Commission considered a test claim filed by the County of Los Angeles on the 1995 amendment to Penal Code section 13730 (*Domestic Violence Training and Incident Reporting*, CSM 96-362-01). The Commission concluded 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 itself optional, and the additional information under the test claim statute came into play only after a local agency elected to complete the incident report.

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[1] Exhibit ___.

Based on the plain language of the suspension statute (Gov. Code, § 17581), the Commission determined, however, that during window periods when the state operates without a budget, the original suspension of the mandate would not be in effect. Thus, the Commission concluded that for the limited window 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 activities required by the 1995 amendment to Penal Code section 13730 were reimbursable under article XIII B, section 6.[2]

In 1998, Government Code section 17581 was amended to close the gap and continue the suspension of programs during window periods when the state operates without a budget.[3] In 2001, the California Supreme Court upheld Government Code section 17581 as constitutionally valid.[4] The Domestic Violence Information and Incident Reporting programs remained suspended in the 2002 Budget Act.[5]

Test Claim Statutes

Penal Code section 13730, as added in 1984 and amended in 1995, requires local law enforcement agencies to develop and prepare domestic violence incident reports as specified by statute. Penal Code section 13730 states the following:

> (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons were involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.
>
> (b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.

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[2] Exhibit ___.

[3] Government Code 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.)

[4] *Carmel Valley Fire Protection District v. State of California* (2001) 25 Cal.4th 287, 297.

[5] The 2002 State Budget Act (Stats. 2002, ch. 379, Item 9210-295-0001). The Governor's Proposed Budget for fiscal year 2003-04 proposes to continue the suspension of the domestic violence incident report.

(c) Each law enforcement agency shall develop an incident report 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. A report shall include at least both of the following:

(1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.

(2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency has previously responded to a domestic violence call at the same address involving the same alleged abuser or victim.

Family Code section 6228 requires state and local law enforcement agencies to provide, without charge, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence upon request within a specified period of time. Family Code section 6228, as added in 1999, states the following:

(a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.

(b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

(d) Persons requesting copies under this section shall present state or local law enforcement with identification at the time a request is made.

(e) This section shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incidence report.

(f) This section shall be known, and may be cited, as the Access to Domestic Violence Reports Act of 1999.

According to the bill analysis prepared by the Assembly Judiciary Committee, section 6228 was added to the Family Code for the following reasons:

> The author notes that victims of domestic violence do not have an expedited method of obtaining police reports under existing law. Currently, victims of domestic violence must write and request that copies of the reports be provided by mail. It often takes between two and three weeks to receive the reports. Such a delay can prejudice victims in their ability to present a case for a temporary restraining order under the Domestic Violence Prevention Act. This bill remedies that problem by requiring law enforcement agencies to provide a copy of the police report to the victim at the time the request is made if the victim personally appears.
>
> The purpose of restraining and protective orders issued under the DVPA [Domestic Violence Prevention Act] is to prevent a recurrence of domestic violence and to ensure a period of separation of the persons involved in the violent situation. According to the author, in the absence of police reports, victims may have difficulty presenting the court with proof of a past act or acts of abuse and as a result may be denied a necessary restraining order which could serve to save a victim's life or prevent further abuse. By increasing the availability of police reports to victims, this bill improves the likelihood that victims of domestic violence will have the required evidence to secure a needed protective order against an abuser.
>
> In addition to the lack of immediate access to copies of police reports, the author points to the cost of obtaining such copies. For example, in Los Angeles County the fee is $13 per report. These fees become burdensome for victims who need to chronicle several incidents of domestic violence. For some the expense may prove prohibitive.[6]

Claimant's Position

The claimant contends that the test claim legislation imposes a reimbursable state-mandated program upon local law enforcement agencies to prepare domestic violence incident reports, store the reports for five years, and retrieve and copy the reports upon request of the domestic violence victim. The claimant contends that it takes 30 minutes to prepare each report, 10 minutes to store each report, and 15 minutes to retrieve and copy each report upon request by the victim. The claimant states that from January 1, 2000 until June 30, 2000, the County prepared and stored 4,740 reports and retrieved 948 reports for victims of domestic violence. The claimant estimates costs during this six-month time period in the amount of $181,228.

Position of the Department of Finance

The Department of Finance filed comments on June 16, 2000, concluding that Family Code section 6228 results in costs mandated by the state.

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[6] Exhibit ___.

Discussion

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 analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation.[10] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[11]

This test claim presents the following issues:

- Does the Commission have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports?
- Is Family Code section 6228 subject to article XIII B, section 6 of the California Constitution?
- Does Family Code section 6228 mandate a new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution?
- Does Family Code section 6228 impose "costs mandated by the state" within the meaning of Government Code sections 17514?

These issues are addressed below.

I. Does the Commission have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports?

The test claim filed by the claimant includes Penal Code section 13730, as added in 1984 and amended in 1995. The claimant acknowledges the Commission's prior final

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

[8] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[9] *Id.*

[10] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d at p. 835.

[11] Government Code section 17514; *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 1264, 1284.

decisions on Penal Code section 13730, and acknowledges the Legislature's suspension of the program. Nevertheless, the claimant argues that Penal Code section 13730, as well as Family Code section 6228, constitute a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

For the reasons provided below, staff finds that the Commission does not have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void. In *City and County of San Francisco v. Ang*, the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is conclusive of the issues involved in the decision.[12]

These principles are consistent with the purpose behind the statutory scheme and procedures established by the Legislature in Government Code section 17500 and following, which implement article XIII B, section 6 of the California Constitution. As recognized by the California Supreme Court, Government Code section 17500 and following were established for the "express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created."[13]

Government Code section 17521 defines a test claim as follows: " 'Test claim' means the first claim, including claims joined or consolidated with the first claim, filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state." Government Code section 17553, subdivision (b), requires the Commission to adopt procedures for accepting more than one claim on the same statute or executive order if the subsequent test claim is filed within 90 days of the first claim and consolidated with the first claim. Section 1183, subdivision (c), of the Commission's regulations allow the Commission to consider multiple test claims on the same statute or executive order only if the issues presented are different or the subsequent test claim is filed by a different type of local governmental entity.

Here, the issue presented in this test claim is the same as the issue presented in the prior test claim; i.e., whether the requirement to prepare a domestic violence incident report constitutes a reimbursable state-mandated activity under article XIII B, section 6 of the California Constitution. The Commission approved CSM 4222, *Domestic Violence*

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[12] *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697; See also, *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.

[13] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 333.

Information, and has already authorized reimbursement for "writing" the domestic violence incident reports. Moreover, this test claim was filed more than 90 days after the original test claims on Penal Code section 13730.

Accordingly, staff finds that the Commission does not have jurisdiction to retry the issue whether Penal Code section 13730 constitutes a reimbursable state-mandated program for the activity of preparing domestic violence incident reports.

The remaining analysis addresses the claimant's request for reimbursement for compliance with Family Code section 6228.

II. Is Family Code Section 6228 Subject to Article XIII B, Section 6 of the California Constitution?

In order for Family Code section 6228 to be subject to article XIII B, section 6 of the California Constitution, the statute must constitute a "program." The California Supreme Court, in the case of *County of Los Angeles* v. *State of California*[14], defined the word "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.[15]

The plain language of Family Code section 6228 requires local law enforcement agencies to provide, without charging a fee, one copy of the domestic violence incident report and/or face sheet to victims of domestic violence within a specified time period. As indicated above, the purpose of the legislation is to assist victims in supporting a case for a temporary restraining order against the accused.

Staff finds that Family Code section 6228 qualifies as a program under article XIII B, section 6. As determined by the Second District Court of Appeal, police protection is a peculiarly governmental function.[16] The requirement to provide a copy of the incident report to the victim supports effective police protection in the area of domestic violence.[17] Moreover, the test claim statute imposes unique requirements on local law enforcement agencies that do not apply generally to all residents and entities in the state.

Accordingly, staff finds that Family Code section 6228 is subject to article XIII B, section 6 of the California Constitution.

III. Does Family Code Section 6228 Mandate a New Program or Higher Level of Service on Local Law Enforcement Agencies?

The claimant alleges that Family Code section 6228 mandates a new program or higher level of service within the meaning of article XIII B, section 6, for the activities of

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[14] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[15] *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.

[16] *Id.*

[17] *Ante*, footnote 1.

preparing, storing, retrieving, and copying domestic violence incident reports upon request of the victim.

Family Code Section 6228 Does Not Mandate Local Law Enforcement Agencies to Prepare a Report or a Face Sheet

First, the plain language of Family Code section 6228 does not mandate or require local law enforcement agencies to prepare a domestic violence incident report or a face sheet. Rather, the express language of the statute states that local law enforcement agencies "shall *provide*, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request." (Emphasis added.)

The claimant acknowledges that Family Code section 6228 does not expressly require the local agency to prepare a report. The claimant argues, however, that preparation of a report is an "implied mandate" because, otherwise, victims would be requesting non-existent reports.[18] Staff disagrees.

Pursuant to the rules of statutory construction, courts and administrative agencies are required, when the statutory language is plain, to enforce the statute according to its terms. The California Supreme Court explained that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted][19]

In this regard, courts and administrative agencies may not disregard or enlarge the plain provisions of a statute, nor may they go beyond the meaning of the words used when the words are clear and unambiguous. Thus, courts and administrative agencies are prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[20] This prohibition is based on the fact that the California Constitution vests the Legislature, and not the Commission, with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly:

> A strict construction of section 6 is in keeping with the rules of constitutional interpretation, which require that constitutional limitations and restrictions on legislative power "are to be construed strictly, and are not to be extended to include matters not covered by the language used." ... "Under our form of government, policymaking authority is vested in

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[18] Exhibit A, page __.

[19] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

[20] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

> the Legislature and neither arguments as to the wisdom of an enactment nor questions as to the motivation of the Legislature can serve to invalidate particular legislation." [Citations omitted.] Under these principles, there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding policies."[21]

Moreover, legislative history of Family Code section 6228 supports the conclusion that the Legislature, through the test claim statute, did not require local agencies to prepare an incident report. Rather, legislative history indicates that local agencies were required under prior law to prepare an incident report. The analyses of the bill that enacted Family Code section 6228 all state that under prior law, a victim of domestic violence could request in writing that a copy of the report be provided by mail.[22] The analysis prepared by the Assembly Appropriations Committee dated September 1, 1999, further states that "[a]ccording to the California State Sheriff's Association, reports are currently available for distribution within 3-12 working days," and that "agencies currently charge a fee of $5-$15 per report."[23]

Accordingly, staff finds that Family Code section 6228 does not mandate local agencies to prepare a domestic violence incident report or a face sheet and, thus, reimbursement is not required for this activity under article XIII B, section 6 of the California Constitution.

Family Code Section 6228 Does Not Impose a New Program or Higher Level of Service for the Activities of Providing, Retrieving, and Copying Information Related to a Domestic Violence Incident.

Family Code section 6228 expressly requires local law enforcement agencies to perform the following activities:

- Provide one copy of all domestic violence incident report face sheets to the victim, free of charge, within 48 hours after the request is made. If, however, the law enforcement agency informs the victim of the reasons why, for good cause, the face sheet is not available within that time frame, the law enforcement agency shall make the face sheet available to the victim no later than five working days after the request is made.
- Provide one copy of all domestic violence incident reports to the victim, free of charge, within five working days after the request is made. If, however, the law enforcement agency informs the victim of the reasons why, for good cause, the incident report is not available within that time frame, the law enforcement agency shall make the incident report available to the victim no later than ten working days after the request is made.

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[21] *City of San Jose, supra*, 45 Cal.App.4th 1802, 1816-1817.

[22] Bill Analysis of Assembly Judiciary Committee, dated September 10, 1999; Senate Floor Analysis dated September 8, 1999; Bill Analysis by the Assembly Appropriations Committee, dated September 1, 1999. (Exhibit ___.)

[23] Exhibit ___.

- The requirements in section 6228 shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incident report.

Staff finds that the claimed activities of "retrieving" and "copying" information related to a domestic violence incident do not constitute a new program or higher level of service. Since 1981, Government Code section 6254, subdivision (f), of the California Public Records Act has required local law enforcement agencies to disclose and provide records of incidents reported to and responded by law enforcement agencies to the victims of an incident.[24] Government Code section 6254, subdivision (f), states in relevant part the following:

> [S]tate and local law enforcement agencies shall disclose the names and addresses of the persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident . . . .

Except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation, law enforcement agencies are required to disclose and provide to the victim the following information:

- The full name and occupation of every individual arrested by the agency; the individual's physical description; the time and date of arrest; the factual circumstances surrounding the arrest; the time and manner of release or the location where the individual is currently being held; and all charges the individual is being held upon;[25] and
- The time, substance, and location of all complaints or requests for assistance received by the agency; the time and nature of the response; the time, date, and location of the occurrence; the time and date of the report; the name and age of the victim; the factual circumstances surrounding the crime or incident; and a general description of any injuries, property, or weapons involved.[26]

Although the general public is denied access to the information listed above, parties involved in an incident who have a proper interest in the subject matter are entitled to such records.[27] Moreover, federal courts have determined that the disclosure of a

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[24] Government Code section 6254 was added by Statutes 1981, chapter 684. Section 6254 was derived from former section 6254, which was originally added in 1968 (Stats. 1968, ch. 1473).

[25] Government Code section 6254, subdivision (f)(1).

[26] Government Code section 6254, subdivision (f)(2).

[27] *Vallejos v. California Highway Patrol* (1979) 89 Cal.App.3d 781, 786.

domestic violence incident report under the Government Code section 6254, subdivision (f), of California Public Records Act is proper.[28]

Furthermore, the information required to be disclosed to victims under Government Code section 6254, subdivision (f), satisfies the purpose of the test claim statute. As indicated in the legislative history, the purpose of the test claim statute is to assist victims of domestic violence in obtaining restraining and protective orders under the Domestic Violence Prevention Act. Pursuant to Family Code section 6300 of the Domestic Violence Prevention Act, a protective order may be issued to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. Staff finds that the disclosure of information describing the factual circumstances surrounding the incident pursuant to Government Code section 6254, subdivision (f), is evidence that can support a victim's request for a protective order under Family Code section 6300.

Finally, staff acknowledges that the requirements under the test claim statute and the requirements under the Public Records Act are different in two respects. First, unlike the test claim statute, the Public Records Act does not specifically mandate when law enforcement agencies are required to disclose the information to victims. Rather, Government Code section 6253, subdivision (b), requires the local agency to make the records "promptly available." Under the test claim statute, law enforcement agencies are required to provide the domestic violence incident report face sheets within 48 hours or, for good cause, no later than five working days from the date the request was made. The test claim statute further requires law enforcement agencies to provide the domestic violence incident report within five working days or, for good cause, no later than ten working days from the date the request was made. While the time requirement imposed by Family Code section 6228 is specific, the activities of providing, retrieving, and copying information related to a domestic violence incident are not new and, thus, do not constitute a new program or higher level of service.

Second, unlike the test claim statute, the Public Records Act authorizes local agencies to charge a fee "covering the direct costs of duplication of the documentation, or a statutory fee, if applicable."[29] The test claim statute, on the other hand, requires local law enforcement agencies to provide the information to victims free of charge.

Although the test claim statute may result in additional costs to local agencies because of the removal of the fee authority, those costs are not reimbursable under article XIII B, section 6. The California Supreme Court has ruled that evidence of additional costs alone does not automatically equate to a reimbursable state-mandated program under section 6. Rather, the additional costs must result from a new program or higher level of service. In *County of Los Angeles v. State of California*, the Supreme Court stated:

> If the Legislature had intended to continue to equate "increased level of service" with "additional costs," then the provision would be circular:

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[28] *Baugh v. CBS, Inc.* (1993) 828 F.Supp. 745, 755.

[29] Government Code section 6253, subdivision (b).

> "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. Under the repealed provision, "additional costs" may have been deemed tantamount to an "increased level of service," but not under the post-1975 statutory scheme [after article XIII B, section 6 was adopted].[30]

The Supreme Court affirmed this principle in *Lucia Mar Unified School District v. Honig*:

> We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state.[31]

As indicated above, the state has not mandated a new program or higher level of service to provide, retrieve, and copy information relating to a domestic violence incident to the victim. Moreover, the First District Court of Appeal, in the *County of Sonoma* case, concluded that article XIII B, section 6 does not extend "to include concepts such as lost revenue."[32]

Accordingly, staff finds that the activities of providing, retrieving, and copying information related to a domestic violence incident do not constitute a new program or higher level of service.

Family Code Section 6228 Does Not Impose a New Program or Higher Level of Service for the Activity of Informing the Victim of the Reasons Why, For Good Cause, the Incident Report and Face Sheet are not Available within the Statutory Time Limits.

Family Code section 6228, subdivision (b), states that the domestic violence incident report face sheet shall be made available to a victim no later than 48 hours after the request, unless the law enforcement agency informs the victim of the reasons why, for good cause, the face sheet is not available within 48 hours. Under these circumstances, the law enforcement agency is required to provide the fact sheet to the victim within five working days after the request is made.

Family Code section 6228, subdivision (c), contains a similar provision. Subdivision (c) states that the domestic violence incident report shall be made available to a victim no later than five working days after the request, unless the law enforcement agency informs the victim of the reasons why, for good cause, the incident report is not available within five working days. Under these circumstances, the law enforcement agency is required to provide the incident report to the victim within ten working days after the request is made.

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[30] *County of Los Angeles, supra*, 43 Cal.3d at pp. 55-56.

[31] *Lucia Mar Unified School District v. Honig, supra*, 44 Cal.3d at p. 835; see also, *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[32] *County of Sonoma, supra*, 84 Cal.App.4th at p. 1285.

Staff finds that the activity of informing the victim of the reasons why, for good cause, the incident report and the face sheet are not available within the statutory time limits does not constitute a new program or higher level of service.

Since 1981, Government Code section 6253 of the Public Records Act has required law enforcement agencies to perform the same activity. Subdivision (c) of Government Code section 6253 states that each agency is required to determine whether a request for public records seeks copies of disclosable public records in the possession of the agency and notify the person making the request of the determination and the reasons of the determination within ten days of the request. Government Code section 6253, subdivision (c), further provides that the time limit may be extended if the agency notifies the person making the request, by written notice, of the reasons for the extension.[33]

Although the time limits defined in Government Code section 6253 and Family Code section 6228 are different, the activity of informing the victim of the reasons why, for good cause, the incident report and face sheet are not available within the statutory time limits is not new and, thus, does not constitute a new program or higher level of service.

Storing the Domestic Violence Incident Report and Face Sheet for Five Years Constitutes a New Program or Higher Level of Service.

Family Code section 6228, subdivision (e), states that the requirements in section 6228 shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incident report. The claimant contends that subdivision (e) imposes a new program or higher level of service on local law enforcement agencies to store the domestic violence incident report for five years. Staff agrees.

Under prior law, local law enforcement agencies are required to provide daily reports of misdemeanor and felony offenses, and a monthly report on domestic violence calls, to the Attorney General and the Department of Justice.[34] But, the state has not previously mandated any record retention requirements on local agencies for information provided to victims of domestic violence. Record retention policies were left to the discretion of the local agency.

Accordingly, staff finds that storing the domestic violence incident report and face sheet for five years constitutes a new program or higher level of service.

Thus, the Commission must continue its inquiry to determine if storing the domestic violence incident report results in increased costs mandated by the state.

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[33] This activity derives from Government Code section 6256.1, which was added by Statutes 1981, chapter 968. In 1998, section 6256.1 was repealed and renumbered section 6253.

[34] Penal Code section 11107 (added by Stats. 1953, ch. 1385); Penal Code section 13730 (added by Stats. 1984, ch. 1609). As indicated above, Penal Code section 13730 has been suspended by the Legislature.

IV. Does Family Code Section 6228 Impose Costs Mandated by the State Within the Meaning of Government Code Section 17514?

Government Code section 17514 defines "costs mandated by the state" as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. The claimant states that it incurred $24,856 to store domestic violence incident reports from January 1, 2000, to June 30, 2000[35] and that none of the exceptions to finding a reimbursable state-mandated program under Government Code section 17556 apply here.

Staff agrees and finds that the requirement to store domestic violence incident reports pursuant to Family Code section 6228, subdivision (e), results in costs mandated by the state.

Conclusion

Staff concludes that Family Code section 6228, as added by Statutes 1999, chapter 1022, mandates a new program or higher level of service for local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514 for the following activity only:

- Storing domestic violence incident reports and face sheets for five years. (Fam. Code, § 6228, subd. (e).)

Staff Recommendation

Staff recommends that the Commission adopt the staff analysis, which partially approves this test claim.

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[35] Schedule 1 attached to Test Claim Filing, Bates page ___ (Exhibit A).

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:

Madera Police Department
Claimant

No. CSM-4222

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on January 22, 1987.

IT IS SO ORDERED January 22, 1987.

Peter Pelkofer

Peter Pelkofer Vice Chairman
Commission on State Mandates

WP 1551A

BEFORE THE COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of: Madera Police Department Claimant	CSM-4222

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on November 20, 1986, in Sacramento, California, during a regulary scheduled meeting of the commission. Chief Gordon Skeels appeared on behalf of the Madera Police Department. Sterling O'Ran of the Office of Criminal Justice Planning also appeared.

Evidence both oral and documentary having been introduced, the matter submitted, and a vote taken the commission finds:

I. NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; legislative appropriation; a timely filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II. FINDINGS OF FACT

1. The test claim was filed with the Commission on State Mandates on June 23, 1986, by the Madera Police Department.

2. The subject of the claim is Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985.

3. Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985 require that California law enforcement agencies develop, adopt and implement written policies and standards for officers' response to domestic violence calls. It also requires law enforcement agencies to maintain records and recording systems specific to domestic violence activities and to provide specific written information to apparent victims of domestic violence.

4. The Madera Police Department has incurred increased costs as a result of having to: develop, adopt and implement standards for police officers' responses to domestic violence calls; maintain records and recording systems; provide written information to victims of domestic violence; compile and submit monthly summary reports to the State Attorney General; develop of a Domestic Violence Incident Report form.

5. The Madera Police Department's resulting increased costs are costs mandated by the State.

III.
DETERMINATION OF ISSUES

1. The Commission has the authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1985 impose a reimbursable state mandate upon California law enforcement agencies. The Madera Police Department has established that these statutes impose a higher level of service by requiring law enforcement agencies to develop, adopt and implement policies and standards for officer's responses to domestic violence calls; by requiring the maintenance of records and recording systems, and by requiring that specific written information be provided to victims of domestic violence.

WP: 1462A

WP 1575A
Adopted: 2/26/87

PARAMETERS AND GUIDELINES
Chapter 1609, Statutes of 1984 and
Chapter 668, Statutes of 1985
DOMESTIC VIOLENCE

I. SUMMARY OF MANDATE

Chapter 1609, Statutes of 1984 added Chapters 1 through 5, and non-consecutive Sections 13700 through 13731 to the California Penal Code. These sections require all law enforcement agencies in the state to develop, adopt and implement written policies and standards for officers' response to domestic violence calls by January 1, 1986. Existing local policies and those developed must be in writing and available to the public upon request and must include specific standards for a range of related activities.

Chapter 1609, Statutes of 1984 also requires law enforcement agencies to develop an incident report form and maintain records of all protection orders with respect to domestic violence incidents. This is required to be available for the information of and use by law enforcement officers responding to domestic violence related calls for assistance and to provide information about such calls to the Attorney General on a monthly basis.

II. COMMISSION ON STATE MANDATES DECISION

On November 20, 1986, the Commission on State Mandates found that Chapter 1609, Statutes of 1984 and Chapter 668, Statutes of 1984 imposed an increased level of service upon local law enforcement agencies thereby mandating that these agencies provide the services as described above. The commission's finding was in response to a test claim, originally filed, by the City of Madera Police Department on June 23, 1986.

III. ELIGIBLE CLAIMANTS

Law enforcement agencies are eligible to file for reimbursement of costs incurred as a result of the state legislated domestic violence programs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1609, Statutes of 1984 became effective on January 1, 1985, and Chapter 668, Statutes of 1985 became effective January 1, 1986. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30 following a given fiscla year to establish eligibility for that fiscal year. The test claim for this mandate was filed on June 23, 1986, therefore, costs incurred on or after July 1, 1985, are reimbursable. Costs incurred as a result of Chapter 668, Statutes of 1985 are reimbursable after its effective date of January 1, 1986.

V. REIMBURSABLE COSTS

A. The following costs associated with the development of a Domestic Violence Policy are reimbursable.

(1) For the costs associated with the development, adoption and implementation of policies and standards, termed a Domestic Violence Policy, pursuant to California Penal Code Section 13701, involving domestice violence implemented by January 1, 1986.

(2) For the costs associated with the development of a system for recording all domestic violence-related calls for assistance to include whether weapons are involved.

(3) For the costs incurred after January 1, 1986, for preparation of a statement of information for victims of incidents of domestic violence.

(4) For monthly summary reports compiled by the local agency and submitted to the Attorney General, State of California.'

(5) For the costs associated with the development of a Domestic Violence Incident Report form used to record and report domestic violence calls.

B. The following costs are now reauired when responding to incidents involving domestic violence, as a result of Chapter 668, and did not exist prior to January 1, 1986. These costs are reimbursable.

(1) For furnishing the victim at the scene of a domestic violence incident with written information regarding legal options and available assistance and any necessary explanation of that information, or for providing orally communicated information regarding legal options and available assistance to victims via telephone when law enforcement response is not reauired.

(2) For the writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.

(3) For the establishment and utilization of a system to verify temporary restraining orders, stay away orders, and proofs of service at the scene of any incidents of domestic violence.

C. The costs for the maintenance of all protection order records which restrain an individual from the home or other court defined areas who has been accused of an illegal behavior and has applied to the court and been granted such an order.

If total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise provided in Section 17564 of the Government Code.

VI. CLAIM PREPARATION

Attach a statement showing the actual increased costs incurred to comply with the mandate.

A. Employee Salaries and Benefits

Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and productive hourly rates and benefits.

B. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials aquired which have been consumed or expended specifically for the purposes of this mandate.

C. Allowable Overhead Costs

Indirect costs may be claimed in the manner prescribed by the State Controller in his claiming instructions.

D. Supporting Data

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of the costs. These documents must be kept on file and made available at the reauest of the State Controller.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claimed. In addition, this reimbursement for this mandate received from any source, e.g., federal, state, block grants, etc., shall be identified and deducted from this claim.

VIII. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Signature of Authorized Representative	Date
Title	Telephone Number

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Sections 13519 and 13730, as amended by Chapter 965, Statutes of 1995 And filed on December 27, 1996; By the County of Los Angeles, Claimant.	CSM-96-362-01 *Domestic Violence Training and Incident Reporting* 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 is hereby adopted by the Commission on State Mandates on February 26, 1998

Date: March 3, 1998

Paula Higashi, Executive Director

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However, the Commission found that while this additional information must be included on the domestic violence incident report, the performance of this incident reporting activity is presently not state mandated because:

- Presently, the State Budget Act of 1997/98 makes the completion of the incident report itself *optional* and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

The Commission recognized that during the period from July 1, 1997 through August 17, 1997, and during subsequent "window periods" when the state operates without a budget, the original suspension of the mandate would not be in effect.

Accordingly, the Commission determined that for the *limited* window period from July 1, 1997 through August 17, 1997, the domestic violence incident reporting, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

The Commission further determined that in all subsequent "window periods" when the state operates without a budget, the domestic violence incident reporting program, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

Therefore, the Commission concluded the following:

- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does *not* impose a reimbursable state mandated program for the period in which the underlying incident reporting program is made optional under Government Code section 17581.
- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for the *limited* window period from July 1, 1997 (the start of the new fiscal year) through August 17, 1997, when the State Budget Act made the incident reporting program optional under Government Code section 17581.
- Penal Code section 13730, subdivision (c), as amended by Chapter 965, Statutes of 1995, does impose a reimbursable state mandated program for all *subsequent* window periods from July 1 (the start of the new fiscal year) until the Budget Act is chaptered and makes the incident reporting program optional under Government Code section 17581.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Sections 13519 and 13730, as amended by Chapter 965, Statutes of 1995 And filed on December 27, 1996; By the County of Los Angeles, Claimant.	NO. CSM - 96-362-01 DOMESTIC VIOLENCE TRAINING AND INCIDENT REPORTING 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 January 29, 1998)

PROPOSED STATEMENT OF DECISION

This test claim was heard by the Commission on State Mandates (Commission) on December 18, 1997, during a regularly scheduled hearing. Mr. Leonard Kaye appeared for the County of Los Angeles; Mr. Glen Fine, appeared for the Commission on Peace Officer Standards and Training; and Mr. James Apps and Mr. James Foreman appeared for the Department of Finance. The following persons were witnesses for the County of Los Angeles: Captain Dennis D. Wilson, Deputy Bernice K. Abram, and Ms. Martha Zavala.

At the 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.

PART I. DOMESTIC VIOLENCE TRAINING

Issue 1: Does the domestic violence continuing education requirement upon law enforcement officers under Penal Code section 13519, subdivision (e), impose a new program or higher level of service

governments (i.e., "[i]t is the intent of the Legislature not to increase the annual training costs of local government.")

Thus, the Commission found this continuing education activity is imposed upon local agencies whose local law enforcement officers carry out a basic governmental function by providing services to the public. Such activity is not imposed on state residents generally.[2] In sum, the Commission found that the first requirement to determine whether the test claim legislation imposes state-mandated program is satisfied.

Second, subdivision (e) of section 13519 imposes a new requirement on certain law enforcement officers below the rank of supervisor to complete an updated course of instruction on domestic violence every two years. This training obligation was not required immediately prior to the enactment of subdivision (e). Instead, local law enforcement agencies were *encouraged*, but not required, to include periodic updates and training on domestic violence *as part of their advance officer training program only*. (Former Pen. Code § 13519, subd. (c).) Accordingly, the Commission found that the second requirement to determine whether the test claim legislation imposes a state mandated program is satisfied.

Third, the Commission found that subdivision (e) is state mandated because local agencies have no options or alternatives available to them and, therefore, the officers described in subdivision (e) must attend and complete the updated domestic violence training course from a POST-certified class.[3]

Based on the foregoing, the Commission found that section 13519, subdivision (e), imposes a new program upon local agencies.

Issue 2: Does section 13519, subdivision (e), impose costs mandated by the state upon local agencies which are reimbursable from the State Treasury?

The latter portion of Penal Code section 13519, subdivision (e), provides in pertinent part:

> ". . . . The instruction required pursuant to this subdivision *shall be funded from existing resources* available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local governmental entities."
> (Emphasis added.)

Given the above statutory language, the Commission continued its inquiry to determine whether local law enforcement agencies incur any increased costs as a result of the test claim statute.

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[2] *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.

[3] *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 832 and 836.

The evidence submitted by the parties reveals that the updated training is accommodated or absorbed within the 24-hour continuing education requirement provided in the above regulation.

POST Bulletin 96-2 was forwarded to local law enforcement agencies shortly after the test claim statute was enacted. The Bulletin specifically recommends that local agencies make the required updated domestic violence training part of the officer's continuing professional training. It does not mandate creation and maintenance of a separate schedule and tracking system for the required domestic violence training. To satisfy the training in question, POST prepared and provided local agencies with course materials and a two-hour videotape.

Additionally, the letter dated July 11, 1997, from Glen Fine of POST indicates POST's interpretation of the test claim statute that the domestic violence update training be included *within* the 24 hour continuing education requirement set forth above. Accordingly, the two-hour course may be credited toward satisfying the officer's 24-hour continuing education requirement.

The Commission disagreed with the claimant's contention that it is entitled to reimbursement as a result of the test claim statute since it cannot redirect funds for salary reimbursement from other non-funded POST training modules. The POST memorandum submitted by the claimant, dated July 6, 1993, reveals that the claimant has not received salary reimbursement for officer training since 1993, before the enactment of the test claim statute.

Accordingly, the Commission found that local agencies incur no increased costs mandated by the state in carrying out this two hour course because:

- *immediately before and after* the effective date of the test claim legislation, POST's minimum required number of continuing education hours for the law enforcement officers in question *remained the same at 24 hours*. After the operative date of the test claim statute these officers must still complete at least 24 hours of professional training every two years,
- the two hour domestic violence training update may be credited toward satisfying the officer's 24 hour minimum,
- the two hour training is *not* separate and apart nor "on top of" the 24 hour minimum,
- POST does not mandate creation and maintenance of a separate schedule and tracking system for this two hour course,
- POST prepared and provides local agencies with the course materials and video tape to satisfy the training in question, and
- of the 24 hour minimum, the two hour domestic violence training update is the only course that is legislatively mandated to be continuously completed every two years by the officers in question. The officers may satisfy their remaining 22 hour requirement by choosing from *the many elective courses* certified by POST.

Chapter 1609, Statutes of 1984, was the subject of a previous test claim (CSM-4222) approved by the Commission on January 22, 1987. The Parameters and Guidelines for Chapter 1609, Statutes of 1984, provided that the following costs were reimbursable:

(1) the "costs associated with the *development of a Domestic Violence Incident Report form* used to record and report domestic violence calls"; and

(2) costs incurred "for the *writing of mandated reports which shall include domestic violence reports, incidents or crime reports directly related to the domestic violence incident.*"

In 1993, the Legislature made minor nonsubstantive changes to section 13730 and amended subdivision (a) to include the second underlined sentence relating to the written incident report required under subdivision (c):

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986 for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. <u>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.</u> Monthly, the total number of domestic violence calls received and the numbers of such cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General." (Chapter 1230, Statutes of 1993.)

Since the Legislature required local law enforcement agencies to develop and complete the domestic violence incident report form in subdivision (c) under the 1984 legislation, the 1993 amendment to subdivision (a) merely *clarified* this reporting requirement, rather than mandating a new or additional requirement. The Commission further noted that a test claim has never been filed on Chapter 1230, Statutes of 1993, requesting that the amendment constitute a new program or higher level of service.

During fiscal years 1992/93 through 1996/97, the Legislature no longer mandated the incident reporting requirements set forth in Penal Code section 13730 pursuant to Government Code section 17581. Accordingly, it was optional for local law enforcement agencies to implement the domestic violence incident reporting activity during these fiscal years. The fiscal year 1997/98 budget continues the suspension, effective August 18, 1997. (Chapter 282, Statutes of 1997, Item 9210-295-0001, par. 2, pp. 587-588.)

In 1995, the Legislature amended Penal Code section 13730, subdivision (c), in Chapter 965, Statutes of 1995. Subdivision (c), as amended by Chapter 965, Statutes of 1995, provides the following:

> "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

domestic violence incident report was determined by the Commission to be a reimbursable state mandated program. However, this program was made optional by the Legislature under Government Code section 17581.

Issue 2: If Penal Code section 13730, as originally added by Chapter 1609, Statutes of 1984, is made optional by the Legislature pursuant to Government Code section 17581, are subsequent legislative amendments to section 13730 also made optional?

The County of Los Angeles contended that Chapter 965, Statutes of 1995, is not included in the Legislature's suspension of the original statute. The County contended that the chapters need to be addressed separately. The County further contended that Chapter 965, Statutes of 1995, is not automatically made optional by association with the original statute. Rather the determination of whether a statute is suspended is up to Legislature.

COMMISSION FINDINGS:

Government Code section 17581 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 XIIIB 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.
>
> " . . . . . "

claim statute does not require a new or different report. It simply specifies the minimum content of the underlying report.

Therefore, the Commission found that the new requirements imposed by Chapter 965, Statutes of 1995, are *not* independent of the incident report as suggested by the claimant; rather, they are encompassed and directly connected to the underlying incident reporting program established by the Legislature in Chapter 1609, Statutes of 1984.[6]

The Commission further found that section 13730, subdivision (c), requires additional information to be included on the domestic violence incident report, the performance of domestic violence incident reporting is *not* state mandated because the development and completion of the report itself was made optional by the Legislature. In other words, since the development and completion of the incident report are not state mandated, then the new information to be included on the incident report is likewise not state mandated.

On the other hand, *if* a local agency voluntarily opts or elects to complete the incident report, then the additional information must be included on the report pursuant to the provisions of the test claim statute. In this respect, Chapter 965, Statutes of 1995, is not a meaningless and unnecessary law as suggested by the claimant.

Therefore, the Commission determined that the new additional information to the domestic violence incident report is not a reimbursable state-mandated program because:

- Presently, the State Budget Act of 1997/98 makes the completion of the incident report *optional* and
- The new additional information under the test claim statute comes into play only after a local agency opts or elects to complete the incident report.

Notwithstanding the foregoing, the Commission determined that for the *limited* window period from July 1, 1997 through August 17, 1997, the domestic violence incident reporting, including the inclusion and completion of the new additional information to the form, is a reimbursable state mandated activity because the 1997/98 Budget Act was not chaptered until August 18, 1997. (Chapter 282, Statutes of 1997.)

The Commission further determined that in all subsequent "window periods" when the state operates without a budget, the domestic violence incident reporting program,

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[6] This test claim is to be distinguished from the previously decided test claim (September 25, 1997), entitled *Domestic Violence Arrest Policies and Standards*, where the Commission determined that the legislation in question imposed new and distinct activities and, therefore, was not affected by Government Code section 17581. In the *Domestic Violence Arrest Policies and Standards* test claim, the Legislature made optional the original requirement to develop, adopt and implement written policies for *response* to domestic violence calls pursuant to Government Code section 17581. The test claim legislation amended the statute adding the requirement to develop and implement *arrest* policies for domestic violence offenders, a new and distinct requirement not encompassed by the previously suspended requirement to develop response policies.

CITY AND COUNTY OF SAN francisco, plaintiff and Appellant,
v.
LEUNG FAI WAH ANG et al., Defendants and Respondents.

Civ. No. 42203.

Court of Appeal, First District, Division 1, California.

Oct. 15, 1979.

SUMMARY

In an action by a city and county for an injunction to abate as a nuisance, certain premises allegedly used as a light food processing for delicatessen, catering or restaurant supply, in violation of the city's zoning ordinances, the trial court sustained defendants' demurrer to the complaint and entered a judgment of dismissal. The record indicated that defendant had obtained the necessary permits for the premises which were operated to prepare and supply food solely for a delicatessen-restaurant located in another part of the city. A year later, the department of city planning issued an order to cease violation of the planning code against the premises. Defendants appealed to the city's board of permit appeals, which, following a hearing, found from the evidence that the operation was of the nature of a catering service which was permitted in that district by the zoning ordinances, and unanimously overruled the order of the department of city planning. (Superior Court of the City and County of San Francisco, No. 700544, John E. Benson, Judge.)

The Court of Appeal affirmed. The court held that the board of permit appeals was a quasi-judicial administrative agency vested by the city charter with jurisdiction to hear and determine, de novo, the present controversy; thus its determination had the effect of a final judgment and was res judicata and beyond collateral attack on the issue of the claimed zoning violation. (Opinion by Elkington, Acting P. J., with Newsom and Grodin, JJ., concurring.) *674

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Administrative Law § 73--Administrative Actions--Adjudication--Decisions and Orders--Operation and Effect--Res Judicata.
The determination of a city board of permit appeals had the effect of a final judgment and was res judicata and beyond collateral attack on the issue of an alleged zoning violation, and thus, the trial court, in an action by the city to abate such alleged zoning violation as a nuisance, properly entered a judgment of dismissal after sustaining defendants' demurrer to the complaint. The record indicated that the board of permit appeals was a quasi-judicial administrative agency, which was by the city's charter vested with jurisdiction to hear and determine, de novo, the controversy concerning the alleged zoning violation.

(2) Judgments § 67--Res Judicata--Fundamental Jurisdiction.
Where there is fundamental jurisdiction of the subject matter and the parties, a determination of a judicial tribunal may ordinarily be attacked only by appeal or other direct review. Unless successfully so attacked, the determination is res judicata of the matter determined and is beyond collateral attack.

(3) Judgments § 94--Res Judicata--Collateral Estoppel--Erroneous or Invalid Judgments--Review by Writ or Appeal.
An act that may be in excess of jurisdiction so as to justify review by prerogative writ will nevertheless be res judicata in relation to a final decision if the court had jurisdiction over the subject and the parties. This is so even though the determination be palpably erroneous, for fundamental jurisdiction, being the power to hear and determine, implies power to decide a question wrong as well as right. If the court has jurisdiction, it may decide the wrong as well as the right in the matter, and its decision is binding on all other persons, officers, and courts, save upon an appeal to the court having appellate jurisdiction of the cause.

(4) Administrative Law § 73--Administrative Actions--Adjudication--Decisions and Orders--Operation and Effect--Res Judicata--Erroneous Decision.
Where a tribunal has jurisdiction of the parties and of the subject matter, it necessarily has the authority and discretion to decide the question submitted to it even though its *675 determination is erroneous. This rule applies to quasi-judicial tribunals as well as the courts. Where the function of an administrative agency is the purely judicial one of reviewing another agency's decision to determine whether that decision conforms to the law and is supported by substantial

evidence, the doctrine of res judicata applies to such decision.

[See Cal.Jur.3d, Administrative Law, § 239; Am.Jur.2d, Administrative Law, § 496.]

(5) Administrative Law § 73--Administrative Actions--Adjudication-- Decisions and Orders--Operation and Effect--Res Judicata--Exception.
The strong policy favoring res judicata and proscribing collateral attack on final judgments will not necessarily apply with equal weight to judgments of courts of general jurisdiction and decisions of quasi-judicial administrative agencies. The latter have only such limited authority as is conferred upon them by law, and courts will set aside such of their acts, even though apparently final, as are beyond their statutory jurisdiction. Inquiry will be made whether the policy supporting the doctrine of res judicata is outweighed by the strong policy against allowing an administrative agency to act without jurisdiction. Where such an administrative agency's order is not based on a determination of facts, but only on an erroneous conclusion of law, and is without the agency's authority, it is void and is subject to collateral attack.

(6) Administrative Law § 73--Administrative Actions--Adjudication-- Decisions and Orders--Operation and Effect--Res Judicata--Orderly Administrative Procedure.
The policy of res judicata can be as important to orderly administrative procedure as to orderly court procedure. Ordinarily, whenever any board, tribunal or person is vested by law with authority to decide a question, such question, when made, is res judicata and as conclusive of issues involved in the decision as though the adjudication had been made by a court of general jurisdiction.

COUNSEL

Thomas M. O'Connor and George Agnost, City Attorneys, Edw. C. A. Johnson, Dianne K. Barry and Diane L. Hermann, Deputy City *676 Attorneys, Jo Nell Biancalana and Craig K. Martin, Staff Attorneys, for Plaintiff and Appellant.

K. Lambert Kirk for Defendants and Respondents.

ELKINGTON, Acting P. J.

By its "Complaint in Injunction" the City and County of San Francisco (City) sought to abate as a nuisance, certain premises allegedly used as "light food processing for delicatessen, catering or restaurant supply," in violation of the City's zoning ordinances. A demurrer to the complaint was sustained without leave to amend and a judgment of dismissal of the action was thereafter entered. The City appeals from the judgment.

The facts of the case, as found in the complaint and other superior court records of which the court took judicial notice (see Evid. Code, § 452, subd. (d); *Weil v. Barthel*, 45 Cal.2d 835, 837 [291 P.2d 30]), follow.

Defendant Bruce Benjamin (served as Doe I) was the owner and operator of a "delicatessen-restaurant" at 1980 Union Street, San Francisco. Not having adequate space for a kitchen at that location, he leased for that purpose property owned by defendant Leung Fai Wah Ang at 3532 Balboa Street, San Francisco, some miles distant from the Union Street premises. Through a building contractor he applied to the City for, and obtained what appeared to be, the necessary permits to construct and operate a "kitchen" at the Balboa Street location. Among other things, a "building permit came through," and a "permit to operate and certificate of sanitary inspection" was issued by the City's department of public health for the business of "delicatessen-wholesale." Necessary work was completed by Benjamin at a cost of approximately $30,000, and the premises were operated to prepare and supply food solely for his Union Street "delicatessen-restaurant."

About a year later the department of city planning, through its zoning administrator, issued an "order to cease violation of planning code" against the Balboa Street premises. The claimed "violation" was the maintenance of a "food processing operation in C-2 district." (It will be noted that the City concedes that "caterers, delicatessens and restaurants are all uses which are permitted in C-2 districts.") The order was *677 appealed to the City's board of permit appeals (hereafter sometimes, Board). Following a hearing the Board, finding from the evidence that Benjamin's operation was of the nature of the permitted "catering," unanimously overruled the order of the department of city planning.

The City was permitted to appeal or seek judicial review of the Board's action through the so-called "administrative-mandamus" procedure of Code of Civil Procedure section 1094.5. It did not seek such a review, the time for which has now long since

expired.

Notwithstanding the final determination of the Board the City, by the instant action, sought to enjoin Benjamin and Ang from maintaining a "public nuisance." The public nuisance of the action was the above mentioned "zoning violation."

(1a)Benjamin and Ang contend that the determination of the Board had the effect of a final judgment, and was therefore res judicata on the issue of the claimed zoning violation, and beyond collateral attack. The City insists that, *the Board lacking "subject matter jurisdiction over the appeal"* (italics added), its determination of it "was void, and of no legal effect."

We are concerned with the frequently confused concept of *jurisdiction* of courts and quasi-judicial administrative agencies such as the Board. Although sometimes the distinction seems disregarded, as apparently here by the City, such jurisdiction may be broken down into two general categories.

The first of them concerns a judicial tribunal's "lack" or "excess" of jurisdiction as the terms with increasing frequency are being used in determining the availability of extraordinary writs for expeditious review of actual, or threatened, judicial determinations. (See *Pacific Mut. Life Ins. Co. v. McConnell*, 44 Cal.2d 715, 725 [285 P.2d 636] [cert. den., 350 U.S. 984 (100 L.Ed. 852, 76 S.Ct. 473)]; *Abelleira v. District Court of Appeal*, 17 Cal.2d 280, 287-291 [109 P.2d 942, 132 A.L.R. 715].) We are unconcerned here with this broad notion of jurisdiction.

(2)The other of the categories is usually termed *"fundamental" jurisdiction*, i.e., *"of the subject matter and the parties."* (*Pacific Mut. Life Ins. Co. v. McConnell, supra*, 44 Cal.2d 715, 725; italics added.) Where there is such fundamental jurisdiction the determination of the judicial tribunal may ordinarily be attacked only by appeal or other direct review. *678 Unless successfully so attacked, the determination is res judicata of the matter determined, and beyond collateral attack. (*Armstrong v. Armstrong*, 15 Cal.3d 942, 951 [126 Cal.Rptr. 805, 544 P.2d 941]; *Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control*, 55 Cal.2d 728, 732 [13 Cal.Rptr. 104, 361 P.2d 712] [cert. den., 356 U.S. 902 (2 L.Ed.2d 580, 78 S.Ct. 562)]; *Signal Oil etc. Co. v. Ashland Oil etc. Co.*, 49 Cal.2d 764, 777 [322 P.2d 1]; *Estate of Keet*, 15 Cal.2d 328, 333 [100 P.2d 1045]; *Estate of Casimir*, 19 Cal.App.3d 773, 780 [97 Cal.Rptr. 623].)

(3)"An act that may be in excess of jurisdiction so as to justify review by prerogative writ ... will nevertheless be res judicata [in relation to a final decision] if the court had jurisdiction over the subject and the parties." (*Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control, supra.*, 55 Cal.2d 728, 731.) This is so even though the determination be palpably erroneous, for fundamental jurisdiction ""being the power to hear and determine, implies power to decide a question wrong as well as right. "" (*Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control, supra.*, p. 731; *Signal Oil etc. Co. v. Ashland Oil etc. Co., supra.*, p. 778.) And such jurisdiction "'does not depend ... upon the regularity of the exercise of that power, ...'" (*In re Coon*, 44 Cal.App.2d 531, 538 [112 P.2d 767]; and see *Lichtenstein v. Superior Court*, 85 Cal.App.2d 486, 489 [193 P.2d 508]; *In re Wood*, 34 Cal.App.2d 546, 551 [93 P.2d 1058].)

As stated in *Baines v. Zemansky*, 176 Cal. 369, 373 [168 P. 565]: "If [the] court has jurisdiction, it may decide the wrong as well as the right in the matter, and its decision is binding on all other persons, officers, and courts, save upon an appeal to the court having appellate jurisdiction of the cause."

(4)The above discussed rules apply also to decisions, as here, of quasi- judicial administrative agencies.

"It is an established rule that where a tribunal has jurisdiction of the parties and of the subject-matter it necessarily has the authority and discretion to decide the questions submitted to it even though its determination is erroneous ... *This rule applies to quasi-judicial tribunals as well as to courts.*" (*Cullinan v. Superior Court*, 24 Cal.App.2d 468, 471-472 [75 P.2d 518, 77 P.2d 471]; italics added.) Where the function of an administrative agency is "the purely judicial one of reviewing another agency's decision to determine whether that decision conforms to the law and is supported by substantial evidence ... [, the] doctrine of res judicata applies to such a decision, ..." (*679 *Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control, supra.*, 55 Cal.2d 728, 732; and see *People v. Western Air Lines, Inc.*, 42 Cal.2d 621, 630 [268 P.2d 723]; *People v. Los Angeles*, 133 Cal. 338, 342 [65 P. 749]; *Gale v. State Bd. of Equalization*, 264 Cal.App.2d 689, 692 [70 Cal.Rptr. 469]; *Saxton v. State Board of Education*, 137 Cal.App. 167, 171 [29 P.2d 873]; *McColgan v. Board of Police Commrs.*, 130 Cal.App. 66, 68-69 [19 P.2d 815].)

(5)Nevertheless it has sometimes been held that the strong policy favoring res judicata and proscribing collateral attack, will not necessarily apply with equal weight to judgments of courts of general jurisdiction, *and* decisions of quasi-judicial administrative agencies. The latter have only such limited authority as is conferred upon them by law, and courts will set aside such of their acts, even though apparently final, as are beyond their statutory jurisdiction. (See *City and County of San Francisco v. Padilla*, 23 Cal.App.3d 388 [100 Cal.Rptr. 223].) Inquiry will be made whether "the policy supporting the doctrine of res judicata is outweighed by the strong policy against allowing an administrative agency ... to act without jurisdiction." (*Id.*, p. 400; and see *Bank of America v. City of Long Beach*, 50 Cal.App.3d 882, 891 [124 Cal.Rptr. 256].) And where such an administrative agency's order is not based on a determination of fact, but only upon an erroneous conclusion of law, and is without the agency's authority, it is void and subject to collateral attack. (*Aylward v. State Board etc. Examiners*, 31 Cal.2d 833, 838-839 [192 P.2d 929].)

(6)But the "policy [of res judicata] can be as important to orderly administrative procedure as to orderly court procedure." (*Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control, supra.*, 55 Cal.2d 728, 732.) And *ordinarily* at least: "'[W]henever any board, tribunal, or person is by law vested with authority to decide a question, such decision, when made, is *res judicata*, and as conclusive of the issues involved in the decision as though the adjudication had been made by a court of general jurisdiction.'" (*People v. Los Angeles, supra.*, 133 Cal. 338, 342.)

We are brought more closely to the issues of the appeal.

The board of permit appeals was created by the City's charter which as relevant here provides:

"Any applicant for a permit or license ... whose license or permit is ordered revoked by any department ... may appeal to the board of permit appeals. Such board shall hear the applicant, the permit-holder, or other interested parties, as well as the head or representative of the *680 department issuing or refusing to issue such license or permit, or ordering the revocation of same. After such hearing and such further investigation as the board may deem necessary, it may concur in the action of the department authorized to issue such license or permit, or, by the vote of four members, may overrule the action of such department and order that the permit or license be granted, restored or refused."

"In the exercise of its appellate jurisdiction ... the Board is invested with complete power to hear and determine the entire controversy before it, is free to draw its own conclusions from the conflicting evidence before it and in the exercise of its independent judgment in the matter to affirm, modify or overrule the action of the subordinate agency or official at the primary level. ... De novo review by the Board is contemplated [by the charter]." (*City and County of San Francisco v. Padilla, supra.*, 23 Cal.App.3d 388, 395; and see authority there collected.)

(1b)It will be seen that the Board was a quasi-judicial administrative agency, which was by the City's charter vested with jurisdiction to hear and determine, de novo, the controversy whether the City's permit to occupy and operate the Balboa Street premises could lawfully be invalidated by the City. The issue might be described as factual, i.e., whether the *forbidden* "food processing operation," or a *permitted* "delicatessen," or "restaurant," or "catering" operation, was being conducted. Or it might be deemed factual-legal, i.e., whether the "C-2 district" zoning restrictions were being violated by Benjamin's Balboa Street operation. No reason for the above mentioned rarely exercised exceptions appearing, the Board's determination of the issue against the City, in the absence of direct review or appeal therefrom, was res judicata, and beyond collateral attack.

We need not, and do not, inquire whether the Board's decision was erroneous. If it were, the Board as noted, having ""'the power to hear and determine, [had the] power to decide [the] question wrong as well as right. "'" (*Hollywood Circle, Inc. v. Dept. of Alcoholic Beverage Control, supra.*, 55 Cal.2d 728, 731.) Nor are we persuaded by the City's argument that the Board's findings of fact were insufficient, or by the contention raised here for the first time, that the Board did not timely make its determination as required by the charter. The Board's jurisdiction did "'not depend ... upon the regularity of the exercise of [the] power, ...'" (See *In re Coon, supra.*, 44 Cal.App.2d 531, 538.) *681

Moreover, we find the City's heavy reliance upon our opinion in *City and County of San Francisco v. Padilla, supra.*, 23 Cal.App.3d 388, to be unfounded. There the Board, without tender of any factual issue

and without pretense or color of legal authority therefor, purported to grant Padilla a zoning variance *expressly forbidden by law*. Although the City failed to seek appropriate direct review of the Board's order, we nevertheless in a subsequent collateral attack upon it by the City denied Padilla a defense of res judicata. We found the decision to have been a question of law alone (see *Aylward v. State Board etc. Examiners, supra.*, 31 Cal.2d 833, 838-839), and the "policy supporting the doctrine of res judicata [to be] outweighed by the strong policy against allowing an administrative agency" to act in open violation of law (see *City and County of San Francisco v. Padilla, supra.*, p. 400). We found the case to be one of the rare exceptions to the rules we have noted.

For these several reasons the judgment of the superior court will be affirmed.

Affirmed.

Newsom, J., and Grodin, J., concurred. *682

Cal.App.1.Dist.,1979.

City and County of San Francisco v. Leung Fai Wah Ang

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GEORGE A. HEAP, Appellant,
v.
CITY OF LOS ANGELES (a Municipal Corporation) et al., Respondents.

L. A. No. 15470.

Supreme Court of California

May 21, 1936.

HEADNOTES

(1) Municipal Corporations--Civil Service--Discharge of Employee--Reexamination--Jurisdiction.
Under the Los Angeles City charter, providing for an investigation of the grounds for discharge of a civil service employee by the board of civil service commissioners, the jurisdiction of the commission is a special and limited one; and when it has acted upon an application of the discharged employee for investigation of the discharge, and has sustained the discharge, its order therein is final and it has no power thereafter to set aside the order and make a new order.

See 18 Cal. Jur. 986.

(2) Municipal Corporations--Petition--Sufficiency of.
In a proceeding for a mandate to compel reinstatement of a discharged civil service employee of a municipality, there is no merit in the point that the petition does not affirmatively allege a prior order of the commission, certified by the board of public works, and that, therefore, it was improper to sustain a demurrer to the petition without leave to amend, where an exhibit to the petition, which is the order under review, expressly refers to the prior action and purports to rescind it.

SUMMARY

APPEAL from a judgment of the Superior Court of Los Angeles County. Emmet H. Wilson, Judge. Affirmed.

The facts are stated in the opinion of the court. *406

COUNSEL

Leo V. Youngworth and J. Harold Decker for Appellant.

Ray L. Chesebro, City Attorney, Frederick von Schrader, Assistant City Attorney, and Thatcher J. Kemp and Jerrell Babb, Deputies City Attorney, for Respondents.

THE COURT.

A hearing was granted in this case after decision by the District Court of Appeal, Second Appellate District, Division One. After further consideration, we adopt the following opinion of said court as part of the opinion of this court:

(1) "Respondents' demurrer to appellant's petition for a writ of mandate was sustained without leave to amend, and the appeal is from the judgment subsequently entered against petitioner. The petition alleges that the appellant, a civil service employee in the bureau of engineering of respondent city, was discharged from his position, and that he thereupon made written application to the civil service commission for an investigation of the grounds for such discharge and hearing thereon. A certified copy of the findings of the commission, the statutory name of which is 'Board of Civil Service Commissioners', is made a part of the petition. This shows that on November 13, 1931, 'a motion was adopted rescinding the action of the Civil Service Commission on October 20, 1931, sustaining said discharge', and that a second motion was then adopted, finding that the grounds stated for the discharge of the appellant were not sustained and ordering him restored to duty. The only question presented on this appeal is whether or not the civil service commission, after having passed upon the question submitted to it, could thereafter vacate its findings and make another and contrary order. Respondent contends that when the commission acted on the matter it exhausted its jurisdiction, and that the subsequent resolution is void.

"The charter of the respondent city provides that a discharged employee may file an application with the board of civil service commissioners for an investigation of the grounds for his discharge. It further provides: 'If after such investigation said board finds, in writing, that the grounds stated for such removal, discharge or suspension were insufficient or were not sustained, and also finds in

writing that the person *407 removed, discharged or suspended is a fit and suitable person to fill the position from which he was removed, discharged or suspended, said board shall order said person ... to be reinstated or restored to duty. The order of said board with respect to such removal, discharge or suspension shall be forthwith certified to the appointing board or officer, and shall be final and conclusive; ...' (Sec. 112 [a], Stats. 1925, pp. 1024, 1067.)

"The jurisdiction of the commission is a special and limited one. (*Peterson v. Civil Service Board*, 67 Cal. App. 70 [227 Pac. 238].) The required procedure was followed, and the question of appellant's discharge was determined by the commission when it adopted the first resolution. Its action sustaining his discharge was 'final and conclusive'. (*Krohn v. Board of Water & Power Commissioners*, 95 Cal. App. 289, 296 [272 Pac. 757].) It had no jurisdiction to retry the question and make a different finding at a later time. The charter gives no such grant of power, and it may not be implied. 'A civil service commission has no inherent power after entering a final order dismissing an officer from the service to entertain a motion for new trial or rehearing and review and set aside its prior order.' (43 Cor. Jur. 682. See, also, *Cook v. Civil Service Commission*, 160 Cal. 598, 600 [117 Pac. 662].)"

Petitioner urges that the case of *Lane v. United States*, 241 U. S. 201 [36 Sup. Ct. 599, 60 L. Ed. 956], sustains his position. It was therein held that the secretary of the interior had power to reconsider a prior administrative order as to which persons were heirs of an Indian allottee of land, despite the fact that his order was, under the statute, "final and conclusive". A reading of the opinion, however, discloses that at the time the redetermination was made, title to the land was still in the United States and under the administrative control of the land department. There were undoubtedly several grounds, both of policy and statutory interpretation, for holding that in such a case a high executive officer had power to reconsider his orders.

But the rule stated above, that a civil service commission has no such power in the absence of express authorization, is sound and practical. If the power were admitted, what procedure would govern its exercise? Within what time would it have to be exercised; how many times could it be *408 exercised? Could a subsequent commission reopen and reconsider an order of a prior commission? And if the commission could reconsider an order sustaining a discharge, could it reconsider an order having the opposite effect, thus retroactively holding a person unfit for his position? These and many other possible questions which might be raised demonstrate how unsafe and impracticable would be the view that a commission might upset its final orders at its pleasure, without limitations of time, or methods of procedure. Seemingly in recognition of this, the Los Angeles charter expressly provides a procedure for reconsidering orders of suspension or removal of policemenor firemen by a board of inquiry, within three years after the making of an order; but no such procedure is provided in the case of the civil service commission.

(2) Petitioner finally suggests that the petition does not affirmatively allege a prior order of the commission of October 20, 1931, certified to the board of public works, and that therefore it was improper to sustain the demurrer without leave to amend. There is no merit in this point, for the exhibit to the petition, which is the order of November 17th, expressly refers to the prior action of October 20, 1931, and purports to rescind it. The fact of a prior order is thus definitely established, and the demurrer was properly sustained.

The judgment is affirmed.

Cal.,1936.

Heap v. City of Los Angeles

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SAVE OXNARD SHORES et al., Plaintiffs and Appellants,
v.
CALIFORNIA COASTAL COMMISSION, Defendant and Appellant; CITY COUNCIL OF THE CITY OF OXNARD, Real Party in Interest and Respondent; OXNARD SHORES OCEANFRONT LOT OWNERS ASSOCIATION et al., Interveners and Appellants.

No. B003988.

Court of Appeal, Second District, California.

Mar 26, 1986.

SUMMARY

In a proceeding for writ of administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a city's land use plan under which residential construction would be allowed in an oceanfront area, the trial court issued an alternative writ, in compliance with which the commission set aside its original decision and filed a return vacating the conditional certification as to the oceanfront area. On motion of an intervenor, an association of lot owners in the area alleging that its members were permitted by the land use plan to construct residences on their lots and that any action setting aside the commission's decision would deprive them of economic development of their property and constitute a taking without just compensation, the trial court issued an order striking the return and restraining the commission from setting aside its decision pending resolution of the litigation. Subsequently, the court ordered the alternative writ discharged and the petition dismissed, and awarded costs to the intervenor and the city. After judgment, the court denied the intervenor's motion for attorney fees on the private attorney general theory pursuant to Code Civ. Proc., § 1021.5. (Superior Court of Ventura County, No. SP 50444, William L. Peck, Judge.)

The Court of Appeal affirmed in part and reversed in part. It held the trial court's action in ordering the returns stricken and in holding the commission's action to be invalid improper, since the commission's action in compliance with the writ was a valid exercise of its authority, and upon resubmission the portion of the land use plan dealing with the affected area would be treated the same as on original submission, receiving a hearing with public participation and the full panoply of procedural safeguards. The court also held that the award of costs to the intervenor and the city was improper, and that the motion for attorney fees was properly denied, since there had *141 been no showing that the litigation was necessary or that the lawsuit placed a burden on the members of the lot owners' association out of proportion to their individual interests in the matter. On appeal, the court held, the association's claim for attorney fees had become moot, since it was not a successful party as required by § 1021.5. (Opinion by Gilbert, J., with Stone, P. J., and Abbe, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Administrative Law § 99--Judicial Review and Relief--Methods-- Administrative Mandamus--Relation to Traditional Mandamus.
Because Code Civ. Proc., § 1094.5, supplements the existing law of mandamus, the same principles and procedures are applicable to both traditional and administrative mandamus. Administrative mandamus did not, by enactment of that section, acquire a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations.

[See Cal.Jur.3d, Administrative Law, § 317.]

(2) Administrative Law § 99--Judicial Review and Relief--Methods-- Administrative Mandamus--Alternative Writ.
On petition for administrative mandamus, a court will issue an alternative writ when the petition sufficiently alleges a cause of action that, if proven, could lead to the issuance of a final or peremptory writ. Administrative proceedings should be completed before the issuance of the writ. The writ is not a final court adjudication but is merely an order for the agency to show cause or, in the alternative, to comply. The agency is placed on notice that petitioners have made a sufficient showing to cast doubt upon the validity of its decision. Although it may be expected that the agency will file an answer to the writ, compliance is among the acceptable responses, and it terminates the litigation.

(3) Administrative Law § 100--Judicial Review and Relief--Methods-- Administrative Mandamus--Availability of Remedy--Where Agency Has Complied With Alternative Writ.
Where an agency files a return that indicates compliance with an alternative writ, the petition is subject to dismissal for mootness, since no purpose would be served in directing the doing of that which has already been done. *142

(4) Administrative Law § 74--Administrative Actions--Adjudication-- Rehearing, Reconsideration, and Modification.
In the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become final. Thus, at the time a lot owners' association filed a petition for administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the commission lacked authority to modify or revoke its original decision, which had become final.

[See Am.Jur.2d, Administrative Law, § 522.]

(5a, 5b, 5c) Pollution and Conservation Laws § 10--Conservation-- Coastal Protection--Power of Coastal Commission to Set Aside Decision.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the court's action was improper in ordering the returns filed by the commission in compliance with the writ stricken pursuant to the motion of an intervenor, an association of lot owners in the affected area, on the ground that the commission lacked the authority to vacate its final decision after 60 days or to set it aside after the lot owners' association intervened, and holding the commission's action to be invalid. The commission's action in compliance with the writ was a valid exercise of its authority, and upon resubmission the portion of the land use plan dealing with the affected area would be treated the same as on original submission, receiving a hearing with public participation and the full panoply of procedural safeguards.

(6) Pollution and Conservation Laws § 10--Conservation--Coastal Protection--Presumption That Coastal Commission Acted in Public Interest.
The presumption that in reaching a decision to approve a land use plan under which residential construction in an oceanfront area would be allowed the California Coastal Commission acted regularly and in the public interest applied equally to its action in complying with an alternative writ directing the commission to set aside its decision or to appear and show cause, and this presumption was not affected by an interim change in the membership on the commission.

(7) Administrative Law § 74--Administrative Actions--Vacating Decision in Compliance With Alternative Writ of Mandate.
Administrative *143 mandamus is a statutory procedure for initiating judicial review of an agency decision that is otherwise accorded a presumption of regularity. Although the agency may defend its decision, neither statutory authority nor judicial precedent requires that response. Further, in the absence of an express requirement that a public hearing be conducted, due process is not violated when an agency obviates judicial review by vacating its decision in voluntary compliance with the writ. Hence, the California Coastal Commission did not violate procedural due process by setting aside a portion of its decision to approve a city's land use plan allowing residential construction in an oceanfront area in compliance with an alternative writ of mandate, notwithstanding that it took such action without notice or a hearing.

(8a, 8b, 8c) Pollution and Conservation Laws § 10--Conservation-- Coastal Protection--Power of Coastal Commission to Set Aside Decision.
In a proceeding for administrative mandamus directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, the action of the commission in setting aside its prior decision did not deprive an intervenor, a lot owners' association alleging that under the land use plan its members were permitted to construct residences on their oceanfront lots and any action setting aside the commission's decision would deprive them of economic development of their property and constitute a taking without just compensation, of procedural due process; because the mere presence of an intervenor does not stay operation of an alternative writ, the commission still retained the option of noncompliance, and after the commission's return was filed, the court had no further authority, the matter was moot, and the intervenor could not compel the court to take further action; further, the

commission's original decision did not turn the desire of members of the association to build homes on their oceanfront lots into a constitutional right.

(9) Parties § 10--Intervention--Power of Interveners.
The ability of interveners to control litigation is circumscribed because they are bound by the status of the proceedings at the time of intervention. They may not, therefore, retard the principal suit, delay trial, or change the position of the parties.

(10) Zoning and Planning § 5--Constitutional and Statutory Provisions-- Vested Rights.
A California property owner has no vested right in an existing or anticipated land use plan, designation, or zoning *144 classification. Nor has he a cause of action for unconstitutional taking or damaging of his property due to the adoption of particular conditions for development. An exception may be made for a developer who has acquired a vested interest in completion of a public construction project by a good faith investment of time or money.

(11) Pollution and Conservation Laws § 10--Conservation--Coastal Protection--Statutory Goals.
The paramount concern of the California Coastal Commission is the protection of the coastal area for the benefit of the public. The predominant goal of the Coastal Act (Pub. Resources Code, § 30000 et seq.) is the protection of public access and preservation of the fragile coastal ecology from overzealous encroachment.

(12) Costs § 8--Taxation and Award--Mandamus Proceeding--Award to Intervener.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, in which proceeding the court, on motion of an intervener, struck the commission's return as invalid, discharged the alternative writ, and dismissed the petition, petitioner, an association of homeowners in the affected area, was improperly ordered to pay costs to the intervener, which was an unincorporated association of residents in the affected area, and to the city that had formulated the land use plan.

(13) Costs § 7--Amount Items Allowable--Attorney Fees--Private Attorney General Theory.
In a proceeding in which an alternative writ of mandate was issued directing the California Coastal Commission to set aside and vacate its decision approving a land use plan under which residential construction would be allowed in an oceanfront area, and in which the court on motion of an intervenor, an association of lot owners in the affected area, ordered the returns filed by the commission in compliance with the writ stricken and held the commission's action to be invalid, the trial court did not abuse its discretion in denying the intervener's motions to require petitioners and the commission to pay its attorney fees on a private attorney general theory pursuant to Code Civ. Proc., § 1021.5, where there was no showing that the litigation was necessary or that the lawsuit placed a burden on the intervenor's members out of proportion to their individual interests in the matter, and where the public benefit, if any, was incidental by comparison to the purely private advantage for the association's members. Further, on appeal the intervener's claim for attorney fees was *145 moot, in that the intervener was not a successful party as required by § 1021.5.

[Allowance of attorneys' fees in mandamus proceedings, note, 34 A.L.R.4th 457.]

COUNSEL

Samuel Goldfarb, in pro. per., Alan G. Martin, Timothy T. Coates, Greines, Martin, Stein & Richland, Cox & Mellen, Michael David Cox, Chase Mellen III and Phil Seymour for Plaintiffs and Appellants.

John K. Van de Kamp, Attorney General, N. Gregory Taylor, Assistant Attorney General, and Peter H. Kaufman, Deputy Attorney General, for Defendant and Appellant.

Thorpe, Sullivan, Workman & Thorpe, Sullivan, Workman & Dee, Roger M. Sullivan and Henry K. Workman for Interveners and Appellants.

K. D. Lyders, City Attorney, for Real Party in Interest and Respondent.

GILBERT, J.

Here we hold that an administrative agency, the California Coastal Commission (Commission), may set aside a portion of its previous decision in compliance with an alternative writ of mandamus.

The alternative writ issued on the petition of Save Oxnard Shores, an unincorporated association of property owners, including William Coopman,

Robert Hansen and Samuel Goldfarb (collectively SOS). SOS questioned the validity of a Commission decision which conditionally certified the City of Oxnard (Oxnard) land use plan (LUP), permitting residential construction in an area known as Oxnard Shores.

Oxnard Shores Oceanfront Lot Owners Association and property owners Erik Linder and Emanuel Gyler (collectively OSOLOA) intervened before the Commission filed its return setting aside the challenged portion of its decision. Thereafter, on motion by OSOLOA, the trial court struck the Commission's return as invalid, discharged the alternative writ, and dismissed the SOS petition. *146

We reverse that portion of the order striking the Commission's return. We affirm the order denying OSOLOA attorney fees on its cross-appeal.

Facts

On May 20, 1980, following public hearings, Oxnard approved a proposed LUP, which permitted residential development in Oxnard Shores, and submitted it to the South Central Regional Coastal Commission (Regional). Regional approved and forwarded the LUP to the Commission on September 19, 1980. On July 21, 1981, the Commission certified the LUP on condition that its provisions be revised to improve public access to the beach in conformity with the California Coastal Act of 1976. (Pub. Resources Code, § 30000 et seq., Coastal Act.)

On September 21, 1981, SOS filed a petition for a writ of administrative mandamus (Code Civ. Proc., § 1094.5) [FN1] directing the Commission to set aside and vacate its decision as to Oxnard Shores. SOS alleged that Oxnard Shores was within 100 year flood and storm wave run-up areas and Commission planners had evidence that the area was likely to suffer additional erosion. Therefore, residential development would be inconsistent with coastal protection policies (Coastal Act, § § 30253, 30211, 30212). In particular, SOS alleged that: (1) a substantial setback from the mean high tide line was required for new construction in the area which was subject to further beach erosion, and (2) prescriptive easements for public use of the beach might be extinguished because access would be restricted during high tides by beachfront residences.

FN1 All statutory references hereafter are to the Code of Civil Procedure unless otherwise specified.

On October 2, the court issued an alternative writ directing the Commission to set aside its decision or to appear and show cause on November 16, 1981. On October 28, OSOLOA filed a complaint in intervention seeking discharge of the alternative writ and denial of the peremptory writ. OSOLOA alleged that its members were permitted by the LUP to construct single-family residences on their oceanfront lots, and any action setting aside the Commission's decision would deprive them of economic development of their property and constitute a taking without just compensation. (Cal. Const., art. I, § 19.)

On January 8, 1982, the Commission conducted a public hearing on the application of OSOLOA member Emanuel Gyler for a permit to build a single-family home on his oceanfront lot. Following testimony relating to residential construction and public beach access, some commissioners expressed *147 doubt about allowing beachfront construction on Oxnard Shores. The hearing on the permit application was adjourned. Because of the alternative writ, the Commission convened in executive session to consider its prior decision.

On January 21, 1982, the Commission set aside its original July 1981 decision. On January 22 it filed a return vacating the conditional certification as to Oxnard Shores in compliance with the writ. The return stated: "First, review of the record of the public hearing on that matter, in light of the allegations and arguments contained in the Petition for Writ of Mandate, called into serious question the correctness of the Commission's analysis and application of geological evidence presented at the hearing; second, review of the record also raised substantial questions concerning the propriety of the Commission's interpretation and application of the Coastal Act with respect to this evidence." A supplemental return was filed in April stating that a public hearing would be deferred pending Oxnard's resubmission of the LUP.

On May 20, the court granted OSOLOA's motion to strike the return and to restrain the Commission from setting aside its decision pending resolution of the litigation. On July 28, at the Commission's request, the court made a "clarification" order that stated: (1) the returns were stricken because the Commission lacked authority to vacate its final decision after 60 days, or to set it aside after OSOLOA intervened, and (2) although the motion did not raise the issue, the

court upon request would hold the Commission's January 1982 action invalid.

On November 23, 1982, OSOLOA accepted this invitation and by way of a supplemental complaint requested a ruling that the Commission's action to reconsider its original decision was invalid. Not surprisingly, the trial court on cross-motions for summary adjudication, ruled that the Commission's action vacating its earlier decision was invalid.

On March 16, 1983, OSOLOA filed a motion to discharge the alternative writ and dismiss the SOS petition because no issues were presented for trial. The court had entered an order October 12, 1982, which required SOS to file the administrative record by January 17, established a briefing schedule beginning February 15, and set trial for April 4. OSOLOA alleged that SOS had not yet either paid for or filed the administrative record and that without the record, SOS could not show the insufficiency of the evidence to support the decision or overcome the presumption that the Commission regularly performed its official duty. SOS argued that the Commission's compliance rendered the administrative record irrelevant. *148

On June 22, 1983, the trial court granted OSOLOA's motion. The court stated, inter alia, that while trial was continued pending receipt of the administrative record, the Commission filed a return purporting to vacate its decision without a hearing, solely as to Oxnard Shores, on a "review of the record." The court ordered the return stricken because no record had been prepared and declared the Commission's action invalid. In the absence of the administrative record, the matter was governed by the presumption that the Commission proceedings were "regularly performed" and supported by the evidence (Evid. Code, § 664; *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 573-574 [58 Cal.Rptr. 664]) and there was no basis to issue a peremptory writ of mandate. The court therefore discharged the alternative writ, denied the peremptory writ, dismissed the SOS petition, reaffirmed its orders striking the Commission's returns to the alternative writ, and awarded costs to OSOLOA and Oxnard.

After judgment, OSOLOA moved for orders allowing attorney's fees against the Commission and SOS on the "private attorney general" theory. (Code Civ. Proc., § 1021.5.) The court denied both motions.

Discussion

SOS contends that the trial court erred in striking the returns and that the Commission's valid compliance with the alternative writ rendered the peremptory writ proceedings moot.

I

The alternative writ of mandamus issued on SOS' timely verified petition for judicial review under section 1094.5 as authorized by section 30801 of the Coastal Act (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280 [109 P.2d 942, 132 A.L.R. 715].) Administrative mandamus (§ 1094.5) provides for judicial review of an agency decision resulting from a proceeding in which "(1) by law a hearing is required to be given, (2) evidence is required to be taken, and (3) the determination of the facts is the responsibility of the administrative agency." (§ 1094.5, subd. (a); *Gong v. City of Fremont, supra*, 250 Cal.App.2d 568, 572.)

(1)Because section 1094.5 supplements the existing law of mandamus, the same principles and procedures are applicable to both traditional and administrative mandamus. "... administrative mandamus did not thereby acquire a separate and distinctive legal personality. It is not a remedy removed from the general law of mandamus or exempted from the latter's established principles, requirements and limitations." (*Grant v. Board of Medical Examiners* (1965) 232 Cal.App.2d 820, 826 [43 Cal.Rptr. 270].) *149 "... mandamus pursuant to section 1094.5, commonly denominated 'administrative' mandamus, is mandamus still.... The full panoply of rules applicable to 'ordinary' mandamus applies to 'administrative' mandamus proceedings, except where modified by statute...." (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 673-674 [170 Cal.Rptr. 484, 620 P.2d 1032].) The established mandamus procedures and rules of pleading (§ 1109) govern proceedings to obtain judicial review of administrative agency actions. (*Felice v. Inglewood* (1948) 84 Cal.App.2d 263, 267 [190 P.2d 317]; *Scannell v. Wolff* (1948) 86 Cal.App.2d 489, 492 [195 P.2d 536].)

(2)The court will issue an alternative writ when the petition sufficiently alleges a cause of action which, if proven, could lead to the issuance of a final or peremptory writ. (*Joerger v. Superior Court* (1934) 2 Cal.App.2d 360, 363 [37 P.2d 1084].) Administrative proceedings should be completed before the issuance of a judicial writ. (*McPheeters v. Board of Medical Examiners* (1947) 82 Cal.App.2d

709, 717 [187 P.2d 116].) The writ is not a final court adjudication but is merely an order for the agency to show cause or, in the "alternative," to comply. The agency is placed on notice that petitioners have made a sufficient showing to cast doubt upon the validity of its decision. Although it may be expected that the agency will file an answer to the writ, compliance is among the acceptable responses (§ § 1087, 1089, 1104, 1109), and it terminates the litigation. (*George v. Beaty* (1927) 85 Cal.App. 525, 529 [260 P. 386].)

(3)When the agency files a return which indicates compliance with the alternative writ, the petition is subject to dismissal for mootness. (*Bruce v. Gregory* (1967) 65 Cal.2d 666 [56 Cal.Rptr. 265, 423 P.2d 193].) "... [I]f the respondent has complied with the petitioner's demands after issuance of the alternative writ, the writ has accomplished the purpose of the mandamus proceedings and the petition should be dismissed as moot. [Citations.] The rationale is, 'No purpose would be served in directing the doing of that which has already been done.' [Citations.] In *George v. Beaty*, 85 Cal.App. 525 [260 P. 386], the court said: '[T]he remedy of *mandamus* will not be employed where the respondents show that they are willing to perform the duty without the coercion of the writ.... "'*Mandamus* will not issue to compel the doing of an act which has already been done, *or which the respondent is willing to do without coercion*'...."' (P. 529.) '[W]here the return to the alternative writ shows a compliance therewith, the petition will be dismissed.' (P. 532.)" (*Id.*, at p. 671.)

(4)It is true, as OSOLOA argues, that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once its decision has become final. (*Olive Proration etc. Com. v. Agri. etc.* *150*Com.* (1941) 17 Cal.2d 204, 209 [109 P.2d 918].) Therefore, at the time the petition was filed the Commission lacked authority to modify or revoke its original decision, which had become final. (5a)It does not follow that the Commission was without power to comply with a judicial alternative writ.

The SOS petition did not incorporate the administrative record, but it alleged with specificity the ways in which the Commission's original decision violated the policies expressed in the Coastal Act. The court determined that a sufficient showing was made and the alternative writ issued 10 days after the petition was served on the Commission and Oxnard. (§ § 1088, 1107.) The writ commands "the party to whom it is directed immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a time and place then or thereafter specified by a court order why he has not done so." (§ 1087.)

The alternative writ of mandamus differs from its counterpart in prohibition, which forecloses all agency action pending hearing to determine the necessity for a permanent injunction. (§ 1104.) To the contrary, the alternative writ of mandamus orders the party to whom it is directed to take action in compliance "or" to show cause. (§ 1087.) The Commission was thereby authorized to determine whether to defend its original decision or comply with the writ until it was quashed or discharged. (6)The presumption that the Commission acted regularly and in the public interest in reaching its original decision applies equally to its action complying with the writ. (Coastal Act, § 30004, subd. (b).) This presumption is not affected by an interim change in the membership on the Commission, as OSOLOA argues.

(7)Oxnard attempts to differentiate administrative mandamus (§ 1094.5) requesting a judicial order to vacate a final administrative decision, from traditional mandamus (§ 1085) seeking a judicial order to compel performance of a ministerial act. Because the Commission here performed an adjudicatory function (*Yost v. Thomas* 36 Cal.3d 561 [205 Cal.Rptr. 801, 685 P.2d 1152]), Oxnard argues that procedural due process requires notice and a hearing before its decision can be vacated. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612 [156 Cal.Rptr. 718, 596 P.2d 1134].) Administrative mandamus, however, is a statutory procedure for initiating judicial review of an agency decision which is otherwise accorded a presumption of regularity. Although the agency may defend its decision, neither statutory authority nor judicial precedent require that response. Furthermore, in the absence of an express requirement that a public hearing be conducted, due process is not violated when an agency obviates judicial review by vacating its decision in voluntary compliance with the writ. *151

(8a)OSOLOA argues, nevertheless, that in view of the constitutional issues affecting the property interests held by the interveners, the Commission was required to extend full procedural due process, including a public hearing, before vacating its decision. The presence of an intervener, however, does not bar agency compliance with a judicial order in the form of an alternative writ.

The allegations of OSOLOA's complaint established

that its members were entitled to intervene because their property interests were affected by the Commission's decision. (*Hospital Council of Northern Cal. v. Superior Court* (1973) 30 Cal.App.3d 331, 336 [106 Cal.Rptr. 247]; *Linder v. Vogue Investments, Inc.* (1966) 239 Cal.App.2d 338, 343-344 [48 Cal.Rptr. 633].) (9)The ability of intervenors to control the litigation is, nonetheless, circumscribed because they are bound by the status of the proceedings at the time of intervention. (*Linder v. Vogue Investments, Inc., supra*, 239 Cal.App.2d at p. 344; *Townsend v. Driver* (1907) 5 Cal.App. 581 [90 P. 1071].) Intervenors, therefore, may not retard the principal suit, delay trial, or change the position of the parties. (*Hibernia etc. Society v. Churchill* (1900) 128 Cal. 633, 636 [61 P. 278].)

(8b)When OSOLOA intervened, the alternative writ had already issued and OSOLOA did not take immediate action to recall, discharge, or otherwise stay operation of the writ. (*Marc Bellaire, Inc. v. Fleischman* (1960) 185 Cal.App.2d 591, 597 [8 Cal.Rptr. 650].) Because the mere presence of an intervener does not stay operation of the alternative writ, the Commission still retained the option of compliance. After the Commission's return was filed, the court had no further authority, the matter was moot, and the third party interveners could not compel the court to take further action. When a return to the writ is filed indicating compliance with the court's order, there is no need for the court to make a further determination concerning the peremptory writ.

Moreover, the desire of the members of OSOLOA to build homes on their oceanfront lots did not turn into a constitutional right because of the Commission's original decision. (Cal. Const., art. I, § 19.) (10)A California property owner has no vested right in an existing or anticipated land use plan, designation or zoning classification. (*HFH, Ltd. v. Superior Court* (1975) 15 Cal.3d 508, 516 [125 Cal.Rptr. 365, 542 P.2d 237], cert. den., 425 U.S. 904 [47 L.Ed.2d 754, 96 S.Ct. 1495]; *Cormier v. County of San Luis Obispo* (1984) 161 Cal.App.3d 850 [207 Cal.Rptr. 880].) Nor has he a cause of action for unconstitutional taking or damaging of his property due to the adoption of particular conditions for development (*Agins v. City of Tiburon* (1979) 24 Cal.3d 266 [157 Cal.Rptr. 372, 598 P.2d 25], affd. (1980) 447 U.S. 255 [65 L.Ed.2d 106, 100 S.Ct. 2138]) or any portion of *152 an LUP. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 121 [109 Cal.Rptr. 799, 514 P.2d 111].) An exception may be made for a developer who has acquired a vested interest in completion of a public construction project by a good faith investment of time or money. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785 [132 Cal.Rptr. 386, 553 P.2d 546], cert. den., 429 U.S. 1083 [51 L.Ed.2d 529, 97 S.Ct. 1089]; *Transcentury Properties, Inc. v. State of California* (1974) 41 Cal.App.3d 835 [116 Cal.Rptr. 487].)

(11)The paramount concern of the Commission is the protection of the coastal area for the benefit of the public. The predominant goal of the Coastal Act is the protection of public access and preservation of the fragile coastal ecology from overzealous encroachment. The objectives of the Coastal Act are succinctly stated by Justice Mosk in *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 162-163 [188 Cal.Rptr. 104, 655 P.2d 306] as follows:

"Growing public consciousness of the finite quantity and fragile nature of the coastal environment led to the 1972 passage of ... an initiative measure entitled the California Coastal Zone Conservation Act (the 1972 Coastal Act). (Former Pub. Resources Code, § § 27000-27650.) [¶] ... [¶] One of the stated purposes of the 1972 Coastal Act was to increase public access to the coast. The 1972 Coastal Act was an interim measure, destined by its own terms to expire at the beginning of 1977. It authorized the interim coastal commission to prepare a study summarizing the progress of planning in the coastal zone and delineating goals and recommendations for the future of California's shoreline for the guidance of the Legislature. The study, labeled the California Coastal Plan, was completed in December 1975 and submitted to the Legislature, which used it as a guide when drafting the California Coastal Act of 1976 (the Coastal Act). (Pub. Resources Code, § 30000 et seq.) The Coastal Act created the California Coastal Commission (the Commission) to succeed the California Coastal Zone Conservation Commission. One of the objectives of the 1976 version of the Coastal Act was to preserve existing public rights of access to the shoreline and to expand public access for the future."

(8c)We presume that the Commission acted in accordance with the Coastal Act objectives when it set aside its prior decision. Because the Commission was not required under the circumstances of this case to conduct a public hearing to determine its response to the writ, its action did not deprive interveners of procedural due process.

(5b)The Coastal Act prescribes procedures for Commission approval and certification of land use plans submitted by local governments of coastal *153 area communities. (Pub. Resources Code, § 30512, subd. (e).) In this case, Oxnard prepared and submitted an original LUP, which Regional had approved, and which was presented for the first time to the Commission for approval and certification. (Pub. Resources Code, § § 30511, 30513.) The Commission conditionally certified the LUP and returned it to Oxnard with instructions to make the required provisions for public beach access. (Pub. Resources Code, § 30500, subd. (a).)

Coastal Act section 30512, subdivision (d) states: "If the Commission refuses certification, in whole or in part, it shall send a written explanation for such action to the appropriate local government and regional commission. A revised land use plan may be resubmitted directly to the Commission for certification." The Commission's decision notified Oxnard of the modifications that should be made before the LUP was resubmitted to the Commission for certification. The returns filed by the Commission, however, vacated the conditional certification of the LUP as to Oxnard Shores and thus reopened the entire subject of development on oceanfront property. We conclude from our analysis of the Coastal Act that the public hearing process shall be initiated anew as to Oxnard Shores upon resubmission of the LUP.

The Commission adopts its own rules and regulations to carry out the purposes of the Coastal Act. (Pub. Resources Code, § 30333.) The Coastal Act requires the Commission to obtain the full and adequate participation by all interested groups and the public in its works and programs. (Pub. Resources Code, § 30339, subds. (b), (d).) Among other things, the Coastal Act seeks to insure open consideration and effective public participation in Commission proceedings. (Pub. Resources Code, § 30006.)

A public hearing is required at the time the Commission considers an original submission of a land use plan. Although the Coastal Act is not explicit in this regard, the reasonable inference from the statutory scheme is that the portion of the Oxnard LUP dealing with Oxnard Shores must, upon resubmission, be treated the same as an original submission. It will, therefore, receive a hearing with public participation and the full panoply of procedural safeguards. (Pub. Resources Code, § 30512.)

In view of our determination that the Commission's action in compliance with the alternative writ was a valid exercise of its authority, we do not reach the additional issues relating to the Commission's action or OSOLOA's supplemental complaint.

(12)SOS was improperly ordered to pay costs to OSOLOA, which is an "unincorporated association of residents within Oxnard Shores," and to *154 Oxnard pursuant to section 1032. (*City of Long Beach v. Bozek* (1982) 31 Cal.3d 527 [183 Cal.Rptr. 86, 645 P.2d 137], judg. vacated and cause remanded (1983) 459 U.S. 1095 [74 L.Ed.2d 943, 103 S.Ct. 712], reiterated (1983) 33 Cal.3d 727 [190 Cal.Rptr. 918, 661 P.2d 1072].) This order is stricken.

(5c)The trial court improperly ordered the returns stricken pursuant to OSOLOA's motion on May 20, 1982, and held the Commission's action was invalid on February 23, 1983. The order and judgment are, and each is, reversed.

II

(13)OSOLOA on cross-appeal contends that the trial court abused its discretion in denying motions to require SOS, Samuel Goldfarb or the Commission to pay its attorneys fees on a "private attorney general" theory. (§ 1021.5.) These motions were denied because the court concluded that an order for payment of fees would unconstitutionally infringe the rights of SOS and its individual members to petition a governmental entity for redress of grievances. (Cal. Const., art. I, § 3; *City of Long Beach v. Bozek, supra*, 31 Cal.3d 527, 534.) The court further found that OSOLOA did not vindicate or enforce a right which conferred a significant benefit on the general public, since its members merely desired to construct residences on their oceanfront lots. (*Pacific Legal Foundation v. California Coastal Com., supra*, 33 Cal.3d 158, 167.) The public's interests were represented by Oxnard and the Commission. (See *Grimsley v. Board of Supervisors* (1985) 163 Cal.App.3d 672, 678 [209 Cal.Rptr. 587] and 169 Cal.App.3d 960 [213 Cal.Rptr. 108]; *People* ex rel. *Deukmejian v. Worldwide Church of God* (1981) 127 Cal.App.3d 547, 556 [178 Cal.Rptr. 913].)

There was no showing that the litigation was necessary or that the lawsuit placed a burden on OSOLOA members out of proportion to their individual interests in the matter. (*County of Inyo v. City of Los Angeles* (1978) 78 Cal.App.3d 82, 89

[144 Cal.Rptr. 71]; *Woodland Hills Residents Assn. v. City Council* (1979) 23 Cal.3d 917, 941 [154 Cal.Rptr. 503, 593 P.2d 200]; see also 34 A.L.R.4th 457 § § 12-14.) Here, the public benefit, if any, was incidental by comparison to the purely private advantage for the members of OSOLOA. (*Schwartz v. City of Rosemead* (1984) 155 Cal.App.3d 547 [202 Cal.Rptr. 400]; *Beach Colony II v. California Coastal Com.* (1984) 151 Cal.App.3d 1107 [199 Cal.Rptr. 195] and (1985) 166 Cal.App.3d 106 [212 Cal.Rptr. 485].)

On appeal, OSOLOA's claim for attorneys fees has become moot because OSOLOA is not a successful party as required by section 1021.5. The judgment denying attorneys fees is affirmed. *155

The judgment declaring the Commission's action invalid is reversed and the court is instructed to accept the returns to the alternative writ which were improperly stricken.

The judgment in all other respects is affirmed because the Commission's action in compliance with the alternative writ rendered the SOS petition moot.

Each party to bear its own costs on appeal.

Stone, P. J., and Abbe, J., concurred.

Petitions for a rehearing were denied April 23, 1986, and respondent's petition for review by the Supreme Court was denied June 18, 1986. *156

Cal.App.2.Dist.,1986.

Save Oxnard Shores v. California Coastal Com'n (City Council of City of Oxnard)

END OF DOCUMENT

H

Estate of DENIS H. GRISWOLD, Deceased.
NORMA B. DONER-GRISWOLD, Petitioner and Respondent,
v.
FRANCIS V. SEE, Objector and Appellant.

No. S087881.

Supreme Court of California

June 21, 2001.

SUMMARY

After an individual died intestate, his wife, as administrator of the estate, filed a petition for final distribution. Based on a 1941 judgment in a bastardy proceeding in Ohio, in which the decedent's biological father had confessed paternity, an heir finder who had obtained an assignment of partial interest in the estate from the decedent's half siblings filed objections. The biological father had died before the decedent, leaving two children from his subsequent marriage. The father had never told his subsequent children about the decedent, but he had paid court-ordered child support for the decedent until he was 18 years old. The probate court denied the heir finder's petition to determine entitlement, finding that he had not demonstrated that the father was the decedent's natural parent pursuant to Prob. Code, § 6453, or that the father had acknowledged the decedent as his child pursuant to Prob. Code, § 6452, which bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent/child relationship unless the parent or relative acknowledged the child and contributed to the support or care of the child. (Superior Court of Santa Barbara County, No. B216236, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B128933, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that, since the father had acknowledged the decedent as his child and contributed to his support, the decedent's half siblings were not subject to the restrictions of Prob. Code, § 6452. Although no statutory definition of "acknowledge" appears in Prob. Code, § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had confessed paternity in the 1941 bastardy proceeding, he had acknowledged the decedent under the plain terms of the statute. The court also held that the 1941 Ohio judgment established the decedent's biological father as his natural parent for purposes of intestate succession under Prob. Code, § 6453, subd. (b). Since the identical issue was presented both in the Ohio proceeding and in this California proceeding, the Ohio proceeding bound the parties *905 in this proceeding. (Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J. (see p. 925).)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Parent and Child § 18--Parentage of Children-- Inheritance Rights--Parent's Acknowledgement of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.
In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent were precluded by Prob. Code, § 6452, from sharing in the intestate estate. Section 6452 bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative acknowledged the child and contributed to that child's support or care. The decedent's biological father had paid court-ordered child support for the decedent until he was 18 years old. Although no statutory definition of "acknowledge" appears in § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had appeared in a 1941 bastardy proceeding in another state, where he confessed paternity, he had acknowledged the decedent under the plain terms of § 6452. Further, even though the father had not had contact with the decedent and had not told his other children about him, the record disclosed no evidence that he disavowed paternity to anyone with knowledge of the circumstances. Neither the language nor the history of § 6452 evinces a clear intent to make inheritance contingent upon the decedent's awareness of the relatives who claim an inheritance right.

[See 12 Witkin, Summary of Cal. Law (9th ed. 1990) Wills and Probate, § § 153, 153A, 153B.]

(2) Statutes § 29--Construction--Language--Legislative Intent.
In statutory construction cases, a court's fundamental

task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, the court may then look to extrinsic sources, including the *906 ostensible objects to be achieved and the legislative history. In such cases, the court selects the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoids an interpretation that would lead to absurd consequences.

(3) Statutes § 46--Construction--Presumptions--Legislative Intent--Judicial Construction of Certain Language.
When legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, a court may presume that the Legislature intended the same construction, unless a contrary intent clearly appears.

(4) Statutes § 20--Construction--Judicial Function.
A court may not, under the guise of interpretation, insert qualifying provisions not included in a statute.

(5a, 5b) Parent and Child § 18--Parentage of Children--Inheritance Rights--Determination of Natural Parent of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.
In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent, who had been born out of wedlock, were precluded by Prob. Code, § 6453 (only "natural parent" or relative can inherit through intestate child), from sharing in the intestate estate. Prob. Code, § 6453, subd. (b), provides that a natural parent and child relationship may be established through Fam. Code, § 7630, subd. (c), if a court order declaring paternity was entered during the father's lifetime. The decedent's father had appeared in a 1941 bastardy proceeding in Ohio, where he confessed paternity. If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. Since the Ohio bastardy proceeding decided the identical issue presented in this California proceeding, the Ohio proceeding bound the parties in this proceeding. Further, even though the decedent's mother initiated the bastardy proceeding prior to adoption of the Uniform Parentage Act, and all procedural requirements of Fam. Code, § 7630, may not have been followed, that judgment was still binding in this proceeding, since the issue adjudicated was identical to the issue that would have been presented in an action brought pursuant to the Uniform Parentage Act.

(6) Judgments § 86--Res Judicata--Collateral Estoppel--Nature of Prior Proceeding--Criminal Conviction on Guilty Plea.
A trial *907 court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. The issue of the defendant's guilt was not fully litigated in the prior criminal proceeding; rather, the plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his or her guilt. The defendant's due process right to a civil hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources.

(7) Descent and Distribution § 1--Judicial Function.
Succession of estates is purely a matter of statutory regulation, which cannot be changed by the courts.

COUNSEL

Kitchen & Turpin, David C. Turpin; Law Office of Herb Fox and Herb Fox for Objector and Appellant.

Mullen & Henzell and Lawrence T. Sorensen for Petitioner and Respondent.

BAXTER, J.

Section 6452 of the Probate Code (all statutory references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship unless the parent or relative "acknowledged the child" and "contributed to the support or the care of the child." In this case, we must determine whether section 6452 precludes the half siblings of a child born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child

support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever deniedpaternity or knowledge of the out-of- wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory *908 construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

Factual and Procedural Background

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner-Griswold. Doner-Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner-Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self- described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves, [FN1] objected to the petition for final distribution and filed a petition to determine entitlement to distribution.

FN1 California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

See and Doner-Griswold stipulated to the following background facts pertinent to See's entitlement petition.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy complaint" [FN2] in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as $5 per week for child support and maintenance. Draves complied, and for 18 years paid the court- ordered support to the clerk of the Huron County court.

FN2 A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed. 1999) pp. 146, 1148.)

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold *909 divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children, Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two children-Margaret and Daniel-as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted Doner-Griswold's petition for review.

Discussion

(1a) Denis H. Griswold died without a will, and his estate consists solely of separate property.

Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent ...."

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner-Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

Because Griswold was born out of wedlock, three additional Probate Code provisions-section 6450, section 6452, and section 6453-must be considered. *910

As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person" where "[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmarried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child.* [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

A. *Acknowledgement*

As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

(2) In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [*911 105 Cal.Rptr.2d 457, 19 P.3d 1196].) "We begin by examining the statutory language, giving the words their usual and ordinary meaning." (*Ibid.*; *People v. Lawrence* (2000) 24 Cal.4th 219, 230 [99 Cal.Rptr.2d 570, 6 P.3d 228].) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272; *People v. Lawrence*, *supra*, 24 Cal.4th at pp. 230-231.) If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272.) In such cases, we " ' "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." ' " (*Ibid.*)

(1b) Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may

logicallyinfer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge " is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed. 1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit"].) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941 in which she alleged that Draves was the child's father. Draves appeared in that proceeding and publicly " confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances. [FN3] Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable conclusion on this record is that Draves acknowledged Griswold.

> FN3 Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, *912 test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 274; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93 [40 Cal.Rptr.2d 839, 893 P.2d 1160].)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats. 1983, ch. 842, § 55, p. 3084; Stats. 1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.) The Commission also advised that the purpose of the legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

Typically, disputes regarding parental acknowledgement of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation *913 of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to

make it manifest that it could not have been intended" by the Legislature (*Estate of De Cigaran* (1907) 150 Cal. 682, 688 [89 P. 833] [construing Civ. Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably, *Lozano v. Scalier* (1996) 51 Cal.App.4th 843 [59 Cal.Rptr.2d 346] (*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10-month-old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child " and "contributed to the support or the care of the child" as required by section 6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano*, *supra*, 51 Cal.App.4th at pp. 845, 848.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identified. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute. (*Lozano*, *supra*, 51 Cal.App.4th at p. 848.) *Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, citing *914Code Civ. Proc., § 376, subd. (c), Health & Saf. Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano* reasoned, it certainly had precedent for doing so. (*Lozano*, *supra*, 51 Cal.App.4th at p. 849.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly acknowledging it as his own." (See Civ. Code, former § 230.) [FN4] Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

FN4 Former section 230 of the Civil Code provided: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ. Code (1872) § 230, p. 68, repealed by Stats. 1975,ch. 1244, § 8, p. 3196.)
In 1975, the Legislature enacted California's Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828-829 [4 Cal.Rptr.2d 615, 823 P.2d 1216].)

In *Blythe v. Ayres* (1892) 96 Cal. 532 [31 P. 915], decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayers*, *supra*, 96 Cal. at p. 577.) We therefore employed the word's common meaning, which was " 'to own or admit the knowledge of.' " (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542 [108 P. 499].) Not only did that definition endure in case law addressing legitimation (*Estate of Wilson* (1958) 164 Cal.App.2d 385, 388-389 [330 P.2d 452]; see *Estate*

of Gird, *supra*, 157 Cal. at pp. 542- 543), but, as discussed, the word retains virtually the same meaning in general usage today-"to admit to be true or as stated; confess." (Webster's New World Dict., *supra*, at p. 12; see Webster's 3d New Internat. Dict., *supra*, at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82 [183 P. 552, 7 A.L.R. 313], for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case had contained additional evidence of the father's acknowledgement, we focused our attention on his *915 one act of signing the birth certificate and proclaimed: "A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine." (*Id.* at pp. 97-98.)

Similarly, in *Estate of Gird*, *supra*, 157 Cal. 534, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird*, *supra*, 157 Cal. at pp. 542-543.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391 [181 P.2d 741], a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393-394.) Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452. [FN5] (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394; see also *Estate of De Laveaga* (1904) 142 Cal. 158, 168 [75 P. 790] [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young*, *supra*, 80 Cal.App.2d at p. 394.)

FN5 Section 255 of the former Probate Code provided in pertinent part: " ' Every illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock ....' " (*Estate of Ginochio* (1974) 43 Cal.App.3d 412, 416 [117 Cal.Rptr. 565], italics omitted.)

Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner to that provision was enacted in 1985. (See former § 6408.5, added by Stats. 1983, ch. 842, § 55, p. 3084, and amended by Stats. 1984, ch. 892, § 42, p. 3001.) (3) Where, as here, legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the *916 same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437 [35 Cal.Rptr.2d 155]; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007 [55 Cal.Rptr.2d 760, 920 P.2d 705]; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [147 Cal.Rptr. 165, 580 P.2d 665].) (1c) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former § 255, aswell) suffice for purposes of intestate succession under section 6452. [FN6]

FN6 Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child

> born out of wedlock. That difference, however, fails to accrue to Doner-Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

Doner-Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayers*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey* (1967) 257 Cal.App.2d 391 [64 Cal.Rptr. 837].

In *Blythe v. Ayres*, *supra*, 96 Cal. 532, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he "was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577.) Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577.)

In *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389.) Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute. *917

In *Estate of Maxey*, *supra*, 257 Cal.App.2d 391, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare. (*Id.* at p. 397.) The father also, in the presence of others, had asked for permission to take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner-Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193 Cal. 225, 277 [223 P. 974].) In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano*, *supra*, 51 Cal.App.4th 843 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court acknowledgement of a child in an action seeking to establish the existence of a parent and child relationship. (See *Estate of Gird*, *supra*, 157 Cal. at pp. 542-543; *Wong v. Young*, *supra*, 80 Cal.App.2d at pp. 393-394.) As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey*, *supra*, 257 Cal.App.2d at p. 397) or "shouted ... from the house-tops " (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577).

Doner-Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano*, *supra*, 51 Cal.App.4th at p. 848.) (4) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11

Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297].)

(1d) Second, even though *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey*, *supra*, *918257 Cal.App.2d 391, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions: (1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of De Laveaga*, *supra*, 142 Cal. at pp. 168-169 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner-Griswold. (See *Lozano*, *supra*, 51 Cal.App.4th at pp. 848-849; compare with Fam. Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child"].)

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner-Griswold emphasizes the circumstance that Draves did not tell his two other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird*, *supra*, 193 Cal. 225, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives, family friends, and business associates of the child (193 Cal. at p. 252), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260-261.) In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact of paternity. " (*Id.* at p. 276.) *919

Unlike the situation in *Estate of Baird*, Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante*, fn. 3), or that he affirmatively denied he was Griswold's father despite his confession of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of Griswold's existence. In light of the obvious dissimilarities, Doner-Griswold's reliance on *Estate of Baird* is misplaced.

Estate of Ginochio, *supra*, 43 Cal.App.3d 412, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante*, fn. 5.) Although the court noted that the decedent ultimately paid the child support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginochio*, *supra*, 43 Cal.App.3d at pp. 416-417.) Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner-Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's

unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of the child" born out of wedlock. [FN7] In construing former section 6408, *Estate of Corcoran* (1992) 7 Cal.App.4th 1099 [9 Cal.Rptr.2d 475] held that a half sibling was a "natural brother or sister" within the meaning of such *920 exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran*, the Legislature amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats. 1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as amended June 3, 1996, pp. 17-18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of- wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.)

FN7 Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child *or a natural brother or sister of the child or the issue of that brother or sister*) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child. " (Stats. 1990, ch. 79, § 14, p. 722, italics added.)

This legislative history does not compel Doner-Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.) Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby subjecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran*, *supra*, 7 Cal.App.4th 1099, and to substantially reduce the risk noted by the Commission. [FN8] *921

FN8 We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544 [740 N.E.2d 259, 262- 263].) Here, however, Doner-Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ. Code, § § 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493-496 [159 P.2d 643, 162 A.L.R. 606] [where father died domiciled in California, his out-of-wedlock son could inherit where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

B. *Requirement of a Natural Parent and Child*

Relationship

(5a) Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession. [FN9] (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474-475 [3 Cal.Rptr.2d 536].) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam. Code, § 7600 et seq.) It is undisputed, however, that none of those presumptions applies in this case.

FN9 Section 6453 provides in full: "For the purpose of determining whether a person is a 'natural parent' as that term is used is this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code, [FN10] if a court order was entered during the father's lifetime declaring paternity. [FN11] (§ 6453, subd. (b)(1).)

FN10 Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and childrelationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664."

FN11 See makes no attempt to establish Draves's natural parent status under other provisions of section 6453, subdivision (b).

See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he *922 argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (*Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 276 [154 Cal.Rptr. 87].) California courts generally recognize the importance of a final determination of paternity. (E.g., *Weir v. Ferreira* (1997) 59 Cal.App.4th 1509, 1520 [70 Cal.Rptr.2d 33] (*Weir*); *Guardianship of Claralyn S.* (1983) 148 Cal.App.3d 81, 85 [195 Cal.Rptr. 646]; cf. *Estate of Camp* (1901) 131 Cal. 469, 471 [63 P. 736] [same for adoption determinations].)

Doner-Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See *Weir*, *supra*, 59 Cal.App.4th at pp. 1516- 1517, 1521.) Instead, she contends See has not shown that the issue adjudicated

in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (*Birman v. Sproat* (1988) 47 Ohio App.3d 65 [546 N.E.2d 1354, 1357] [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "reputed father" of a child, [FN12] satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (*Beck v. Jolliff* (1984) 22 Ohio App.3d 84 [489 N.E.2d 825, 829]; see also *Estate of Hicks* (1993) 90 Ohio App.3d 483 [629 N.E.2d 1086, 1088-1089] [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

FN12 The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941 bastardy proceeding. (See *State ex rel. Discus v. Van Dorn* (1937) 56 Ohio App. 82 [8 Ohio Op. 393, 10 N.E.2d 14, 16].)

Next, Doner-Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. *923 It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner-Griswold relies upon *Pease v. Pease* (1988) 201 Cal.App.3d 29 [246 Cal.Rptr. 762] (*Pease*). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of his acts by virtue of his guilty plea in a criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. (6) The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appellant's due process right to a hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, fn. omitted.)

(5b) Even assuming, for purposes of argument only, that *Pease*'s reasoning may properly be invoked where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19 [6 Ohio Op. 501, 4 N.E.2d 151, 152] [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease*, *supra*, 201 Cal.App.3d at p. 34.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner-Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record. *924

Finally, Doner-Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the

Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question here, however, is whether the judgment in the bastardy proceeding initiated by Griswold's mother forecloses Doner-Griswold's relitigation of the parentage issue.

Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section 7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir*, *supra*, 59 Cal.App.4th at p. 1521.) Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14 [97 S.Ct. 1459, 1466, 52 L.Ed.2d 31] [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

Disposition

(7) " 'Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts.' " (*Estate of De Cigaran*, *supra*, 150 Cal. at p. 688.) We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred. *925

BROWN, J.

I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must affirm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession-to carry out "the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court- ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss. 1995) 659 So.2d 574, 577 [a father must "openly treat" a child born out of wedlock "as his own " in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here. *926

Cal. 2001.

Estate of DENIS H. GRISWOLD, Deceased. NORMA B. DONER-GRISWOLD, Petitioner and Respondent, v. FRANCIS V. SEE, Objector and Appellant.

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C

WHITCOMB HOTEL, INC. (a Corporation) et al., Petitioners,
v.
CALIFORNIA EMPLOYMENT COMMISSION et al., Respondents; FERNANDO R. NIDOY et al., Interveners and Respondents.

S. F. No. 16854.

Supreme Court of California

Aug. 18, 1944.

HEADNOTES

(1) Statutes § 180(2)--Construction--Executive or Departmental Construction.
The construction of a statute by the officials charged with its administration must be given great weight, for their substantially contemporaneous expressions of opinion are highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in drafting the statute.

See 23 Cal.Jur. 776; 15 Am.Jur. 309.

(2) Statutes § 180(2)--Construction--Executive or Departmental Construction.
An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment.

(3) Statutes § 180(2)--Construction--Executive or Departmental Construction.
An erroneous administrative construction does not govern the interpretation of a statute, even though the statute is subsequently reenacted without change.

(4) Unemployment Relief--Disqualification--Refusal to Accept Suitable Employment.
The disqualification imposed on a claimant by Unemployment Insurance Act, § 56(b) (Stats. 1935, ch. 352, as amended; Deering's Gen. Laws, 1937, Act 8780d), for refusing without good cause to accept suitable employment when offered to him, or failing to apply for such employment when notified by the district public employment office, is an absolute disqualification that necessarily extends throughout the period of his unemployment entailed by his refusal to accept suitable employment, and is terminated only by his subsequent employment.

See 11 Cal.Jur. Ten-year Supp. (Pocket Part) "Unemployment Reserves and Social Security."

(5) Unemployment Relief--Disqualification--Refusal to Accept Suitable Employment.
One who refuses suitable employment without good cause is not involuntarily unemployed through no fault of his own. He has no claim to benefits either at the time of his refusal or at any subsequent time until he again brings himself within the Unemployment Insurance Act. *754

(6) Unemployment Relief--Disqualification--Refusal to Accept Suitable Employment.
Employment Commission Rule 56.1, which attempts to create a limitation as to the time a person may be disqualified for refusing to accept suitable employment, conflicts with Unemployment Insurance Act, § 56(b), and is void.

(7) Unemployment Relief--Powers of Employment Commission--Adoption of Rules.
The power given the Employment Commission by the Unemployment Insurance Act, § 90, to adopt rules and regulations is not a grant of legislative power, and in promulgating such rules the commission may not alter or amend the statute or enlarge or impair its scope.

(8) Unemployment Relief--Remedies of Employer--Mandamus.
Inasmuch as the Unemployment Insurance Act, § 67, provides that in certain cases payment of benefits shall be made irrespective of a subsequent appeal, the fact that such payment has been made does not deprive an employer of the issuance of a writ of mandamus to compel the vacation of an award of benefits when he is entitled to such relief.

SUMMARY

PROCEEDING in mandamus to compel the California Employment Commission to vacate an award of unemployment benefits and to refrain from charging petitioners' accounts with benefits paid. Writ granted.

COUNSEL

Brobeck, Phleger & Harrison, Gregory A. Harrison and Richard Ernst for Petitioners.

Robert W. Kenny, Attorney General, John J. Dailey, Deputy Attorney General, Forrest M. Hill, Gladstein, Grossman, Margolis & Sawyer, Ben Margolis, William Murriah, Gladstein, Grossman, Sawyer & Edises, Aubrey Grossman and Richard Gladstein for Respondents.

Clarence E. Todd and Charles P. Scully as Amici Curiae on behalf of Respondents.

TRAYNOR, J.

In this proceeding the operators of the Whitcomb Hotel and of the St. Francis Hotel in San Francisco seek a writ of mandamus to compel the California Employment Commission to set aside its order granting unemployment insurance benefits to two of their former employees, Fernando R. Nidoy and Betty Anderson, corespondents in this action, and to restrain the commission from charging petitioners' accounts with benefits paid pursuant to *755 that order. Nidoy had been employed as a dishwasher at the Whitcomb Hotel, and Betty Anderson as a maid at the St. Francis Hotel. Both lost their employment but were subsequently offered reemployment in their usual occupations at the Whitcomb Hotel. These offers were made through the district public employment office and were in keeping with a policy adopted by the members of the Hotel Employers' Association of San Francisco, to which this hotel belonged, of offering available work to any former employees who recently lost their work in the member hotels. The object of this policy was to stabilize employment, improve working conditions, and minimize the members' unemployment insurance contributions. Both claimants refused to accept the proffered employment, whereupon the claims deputy of the commission ruled that they were disqualified for benefits under section 56(b) of the California Unemployment Insurance Act (Stats. 1935, ch. 352, as amended; Deering's Gen. Laws, 1937, Act 8780d), on the ground that they had refused to accept offers of suitable employment, but limited their disqualification to four weeks in accord with the commission's Rule 56.1. These decisions were affirmed by the Appeals Bureau of the commission. The commission, however, reversed the rulings and awarded claimants benefits for the full period of unemployment on the ground that under the collective bargaining contract in effect between the hotels and the unions, offers of employment could be made only through the union.

In its return to the writ, the commission concedes that it misinterpreted the collective bargaining contract, that the agreement did not require all offers of employment to be made through the union, and that the claimants are therefore subject to disqualification for refusing an offer of suitable employment without good cause. It alleges, however, that the maximum penalty for such refusal under the provisions of Rule 56.1, then in effect, was a four-week disqualification, and contends that it has on its own motion removed all charges against the employers for such period.

The sole issue on the merits of the case involves the validity of Rule 56.1, which limits to a specific period the disqualification imposed by section 56(b) of the act. Section 56 of the act, under which the claimants herein were admittedly disqualified, *756 provides that: "An individual is not eligible for benefits for unemployment, andno such benefit shall be payable to him under any of the following conditions: ... (b) If without good cause he has refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by the District Public Employment Office." Rule 56.1, as adopted by the commission and in effect at the time here in question, restated the statute and in addition provided that: "In pursuance of its authority to promulgate rules and regulations for the administration of the Act, the Commission hereby provides that an individual shall be disqualified from receiving benefits if it finds that he has failed or refused, without good cause, either to apply for available, suitable work when so directed by a public employment office of the Department of Employment or to accept suitable work when offered by any employing unit or by any public employment office of said Department. Such disqualification shall continue for the week in which such failure or refusal occurred, and for not more than three weeks which immediately follow such week as determined by the Commission according to the circumstances in each case." The validity of this rule depends upon whether the commission was empowered to adopt it, and if so, whether the rule is reasonable.

The commission contends that in adopting Rule 56.1 it exercised the power given it by section 90 of the act to adopt "rules and regulations which to it seem necessary and suitable to carry out the provisions of this act" (2 Deering's Gen. Laws, 1937, Act 8780d, § 90(a)). In its view section 56(b) is ambiguous because it fails to specify a definite period of disqualification. The commission contends that a fixed period is essential to proper administration of the act and that its construction of the section should

be given great weight by the court. It contends that in any event its interpretation of the act as embodied in Rule 56.1 received the approval of the Legislature in 1939 by the reenactment of section 56(b) without change after Rule 56.1 was already in effect.

(1) The construction of a statute by the officials charged with its administration must be given great weight, for their "substantially contemporaneous expressions of opinion are *757 highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute." (*White v. Winchester Country Club*, 315 U.S. 32, 41 [62 S.Ct. 425, 86 L.Ed. 619]; *Fawcus Machine Co. v. United States*, 282 U.S. 375, 378 [51 S.Ct. 144, 75 L.Ed. 397]; *Riley v. Thompson*, 193 Cal. 773, 778 [227 P. 772]; *County of Los Angeles v. Frisble*, 19 Cal.2d 634, 643 [122 P.2d 526]; *County of Los Angeles v. Superior Court*, 17 Cal.2d 707, 712 [112 P.2d 10]; see, Griswold, *A Summary of the Regulations Problem*, 54 Harv.L.Rev. 398, 405; 27 Cal.L.Rev. 578; 23 Cal.Jur. 776.) When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation. (*Helvering v. Griffiths*, 318 U.S. 371, 403 [63 S.Ct. 636, 87 L.Ed. 843]; *United States v. Hill*, 120 U.S. 169, 182 [7 S.Ct. 510, 30 L.Ed. 627]; see *County of Los Angeles v. Superior Court*, 17 Cal.2d 707, 712 [112 P.2d 10]; *Hoyt v. Board of Civil Service Commissioners*, 21 Cal.2d 399, 402 [132 P.2d 804].) Whatever the force of administrative construction, however, final responsibility for the interpretation of the law rests with the courts. "At most administrative practice is a weight in the scale, to be considered but not to be inevitably followed. ... While we are of course bound to weigh seriously such rulings, they are never conclusive." (*F. W. Woolworth Co. v. United States*, 91 F.2d 973, 976.) (2) An administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment. (*California Drive-In Restaurant Assn. v. Clark*, 22 Cal.2d 287, 294 [140 P.2d 657, 147 A.L.R. 1028]; *Bodinson Mfg. Co. v. California Employment Com.*, 17 Cal.2d 321, 326 [109 P.2d 935]; *Boone v. Kingsbury*, 206 Cal. 148, 161 [273 P. 797]; *Bank of Italy v. Johnson*, 200 Cal. 1, 21 [251 P. 784]; *Hodge v. McCall*, 185 Cal. 330, 334 [197 P. 86]; *Manhattan General Equipment Co. v. Commissioner of Int. Rev.*, 297 U.S. 129 [56 S.Ct. 397, 80 L.Ed. 528]; *Montgomery v. Board of Administration*, 34 Cal.App.2d 514, 521 [93 P.2d 1046, 94 A.L.R. 610].) (3) Moreover, an erroneous administrative construction does not govern the interpretation of a statute, even though the statute is subsequently reenacted *758 without change. (*Biddle v. Commissioner of Internal Revenue*, 302 U.S. 573, 582 [58 S.Ct. 379, 82 L.Ed. 431]; *Houghton v. Payne*, 194 U.S. 88 [24 S.Ct. 590, 48 L.Ed. 888]; *Iselin v. United States*, 270 U.S. 245, 251 [46 S.Ct. 248, 70 L.Ed. 566]; *Louisville & N. R. Co. v. United States*, 282 U.S. 740, 757 [51 S.Ct. 297, 75 L.Ed. 672]; *F. W. Woolworth Co. v. United States*, 91 F.2d 973, 976; *Pacific Greyhound Lines v. Johnson*, 54 Cal.App.2d 297, 303 [129 P.2d 32]; see *Helvering v. Wilshire Oil Co.*, 308 U.S.90, 100 [60 S.Ct. 18, 84 L.Ed. 101]; *Helvering v. Hallock*, 309 U.S. 106, 119 [60 S.Ct. 444, 84 L.Ed. 604, 125 A.L.R. 1368]; *Federal Comm. Com. v. Columbia Broadcasting System*, 311 U.S. 132, 137 [61 S.Ct. 152, 85 L.Ed. 87]; Feller, *Addendum to the Regulations Problem*, 54 Harv.L.Rev. 1311, and articles there cited.)

In the present case Rule 56.1 was first adopted by the commission in 1938. It was amended twice to make minor changes in language, and again in 1942 to extend the maximum period of disqualification to six weeks. The commission's construction of section 56(b) has thus been neither uniform nor of long standing. Moreover, the section is not ambiguous, nor does it fail to indicate the extent of the disqualification. (4) The disqualification imposed upon a claimant who without good cause "has refused to accept suitable employment when offered to him, or failed to apply for suitable employment when notified by the district public employment office" is an absolute disqualification that necessarily extends throughout the period of his unemployment entailed by his refusal to accept suitable employment, and is terminated only by his subsequent employment. (Accord: 5 C.C.H. Unemployment Insurance Service 35,100, par. 1965.04 [N.Y.App.Bd.Dec. 830-39, 5/27/39].) The Unemployment Insurance Act was expressly intended to establish a system of unemployment insurance to provide benefits for "persons unemployed through no fault of their own, and to reduce involuntary unemployment. ..." (Stats. 1939, ch. 564, § 2; Deering's Gen. Laws, 1939 Supp., Act 8780d, § 1.) The public policy of the State as thus declared by the Legislature was intended as a guide to the interpretation and application of the act. (*Ibid.*) (5) One who refuses suitable employment without good cause is not involuntarily unemployed through no fault of his own. He has no claim to benefits either at the time of his refusal or at any subsequent time until he again brings himself within *759 the provisions of the

statute. (See 1 C.C.H. Unemployment Insurance Service 869, par. 1963.) Section 56(b) in excluding absolutely from benefits those who without good cause have demonstrated an unwillingness to work at suitable employment stands out in contrast to other sections of the act that impose limited disqualifications. Thus, section 56(a) disqualifies a person who leaves his work because of a trade dispute for the period during which he continues out of work by reason of the fact that the trade dispute is still in active progress in the establishment in which he was employed; and other sections at the time in question disqualified for a fixed number of weeks persons discharged for misconduct, persons who left their work voluntarily, and those who made wilful misstatements. (2 Deering's Gen. Laws, 1937, Act 8780(d), § § 56(a), 55, 58(e); see, also, Stats. 1939, ch. 674, § 14; Deering's Gen. Laws, 1939 Supp., Act 8780d, § 58.) Had the Legislature intended the disqualification imposed by section 56(b) to be similarly limited, it would have expressly so provided. (6) Rule 56.1, which attempts to create such a limitation by an administrative ruling, conflicts with the statute and is void. (*Hodge v. McCall, supra;* Manhattan General Equipment Co. v. Commissioner of Int. Rev., 297 U.S. 129, 134 [56 S.Ct. 397, 80 L.Ed. 528]; see *Bodinson Mfg. Co. v. California Employment Com.*, 17 Cal.2d 321, 326 [109 P.2d 935].) Even if the failure to limit the disqualification were an oversight on the part of the Legislature, the commission would have no power to remedy the omission. (7) The power given it to adopt rules and regulations (§ 90) is not a grant of legislative power (see 40 Columb. L. Rev. 252; cf. Deering's Gen. Laws, 1939 Supp., Act 8780(d), § 58(b)) and in promulgating such rules it may not alter or amend the statute or enlarge or impair its scope. (*Hodge v. McCall, supra;* Bank of Italy v. Johnson, 200 Cal. 1, 21 [251 P. 784]; *Manhattan General Equipment Co. v. Commissioner of Int. Rev., supra;* Koshland v. Helvering, 298 U.S. 441 [56 S.Ct. 767, 80 L.Ed. 1268, 105 A.L.R. 756]; *Iselin v. United States, supra.*) Since the commission was without power to adopt Rule 56.1, it is unnecessary to consider whether, if given such power, the provisions of the rule were reasonable.

The commission contends, however, that petitioners are not entitled to the writ because they have failed to exhaust *760 their administrative remedies under section 41.1. This contention was decided adversely in *Matson Terminals, Inc. v. California Employment Com., ante,* p. 695 [151 P.2d 202]. It contends further that since all the benefits herein involved have been paid, the only question is whether the charges made to the employers' accounts should be removed, and that since the employers will have the opportunity to protest these charges in other proceedings, they have an adequate remedy and there is therefore no need for the issuance of the writ in the present case. The propriety of the payment of benefits, however, is properly challenged by an employer in proceedings under section 67 and by a petition for a writ of mandamus from the determination of the commission in such proceedings. (See *Matson Terminals, Inc. v. California Employment Com., ante,* p. 695 [151 P.2d 202]; *W. R. Grace & Co. v. California Employment Com., ante,* p. 720 [151 P.2d 215].) An employer's remedy thereunder is distinct from that afforded by section 45.10 and 41.1, and the commission may not deprive him of it by the expedient of paying the benefits before the writ is obtained. (8) The statute itself provides that in certain cases payment shall be made irrespective of a subsequent appeal (§ 67) and such payment does not preclude issuance of the writ. (See *Bodinson Mfg. Co. v. California Emp. Com., supra,* at pp. 330-331; *Matson Terminals, Inc. v. California Emp. Com., supra.*)

Let a peremptory writ of mandamus issue ordering the California Employment Commission to set aside its order granting unemployment insurance benefits to the corespondents, and to refrain from charging petitioners' accounts with any benefits paid pursuant to that award.

Gibson, C. J., Shenk, J., Curtis, J., and Edmonds, J., concurred.

CARTER, J.

I concur in the conclusion reached in the majority opinion for the reason stated in my concurring opinion in *Mark Hopkins, Inc. v. California Emp. Co.*, this day filed, *ante,* p. 752 [151 P.2d 233].

Schauer, J., concurred.

Intervener's petition for a rehearing was denied September 13, 1944. Carter, J., and Schauer, J., voted for a rehearing. *761

Cal.,1944.

Whitcomb Hotel v. California Employment Commission

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C

In re RUDY L., a Person Coming under the Juvenile Court Law. THE PEOPLE, Plaintiff and Respondent,
v.
RUDY L., Defendant and Appellant.

No. B079446.

Court of Appeal, Second District, Division 1, California.

Oct 27, 1994.

SUMMARY

The trial court entered an order declaring a minor to be a ward of the court (Welf. & Inst. Code, § 602), based on his commission of vandalism in violation of Pen. Code, § 594. (Superior Court of Los Angeles County, No. FJ08122, Gary Bounds, Temporary Judge. [FN*])

FN* Pursuant to California Constitution, article VI, section 21.

The Court of Appeal affirmed. It held that the trial court did not err in finding the minor had committed vandalism and in declaring him a ward of the court, despite his assertion that lack of permission is an element of vandalism, and that the People failed to prove he had no permission to spray paint on a building. While defendant's appeal was pending, Pen. Code, § 594, subd. (a), was amended to provide that, with respect to public real property, "it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property." However, nothing in the statute's language, either before or after it was amended, specifically makes lack of permission an element of vandalism. Moreover, the legislative history fails to show a legislative understanding that lack of permission is an element of the offense, nor does it show an intent to change the law and make it an element. Although construing the statute in a manner that does not make lack of permission an element renders the phrase "nor had the permission of the owner" surplusage, an undesirable result, it is consistent with legislative intent as expressed in the statute's language (Code Civ. Proc., § 1859). (Opinion by Spencer, P. J., with Ortega and Vogel (Miriam A.), JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Malicious Mischief § 3--Malicious Injury to Property Vandalism--Lack of Permission as Element of Offense.

The trial court did *1008 not err in finding a minor had committed vandalism (Pen. Code, § 594), and in declaring him a ward of the court, despite his assertion that lack of permission is an element of vandalism, and that the People failed to prove he had no permission to spray paint on a building. While defendant's appeal was pending, Pen. Code, § 594, subd. (a), was amended to provide that with respect to public real property, "it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property." However, nothing in the statute's language, either before or after it was amended, specifically makes lack of permission an element of vandalism. Moreover, the legislative history fails to show a legislative understanding that lack of permission is an element of the offense, nor does it show an intent to change the law and make it an element. Although construing the statute in a manner that does not make lack of permission an element renders the phrase "nor had the permission of the owner" surplusage, an undesirable result, it is consistent with legislative intent as expressed in the statute's language (Code Civ. Proc., § 1859).

[See 2 Witkin & Epstein, Cal. Criminal Law (2d ed. 1988) § § 678, 684.]

(2) Statutes § 20--Construction--Judicial Function--Construction of Statute as Written.

It is against all settled rules of statutory construction that courts should write into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute. The court must follow the language used in a statute and give it its plain meaning, even if it appears probable that a different object was in the mind of the Legislature.

COUNSEL

Tibor I. Toczauer, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Carol Wendelin Pollack, Assistant Attorney General, John R. Gorey and Alene M. Games, Deputy Attorneys General, for Plaintiff and Respondent. *1009

SPENCER, P. J.

Introduction

Appellant Rudy L. appeals from an order declaring him to be a ward of the court pursuant to Welfare and Institutions Code section 602 based on his commission of vandalism in violation of Penal Code section 594.

Statement of Facts

On the afternoon of April 29, 1993, appellant spray-painted the letter "A" on the wall of an empty building located at 5327 East Beverly Boulevard. Neither appellant nor his mother owned the building.

Contention

(1a) Appellant contends the petition erroneously was sustained, in that the elements of the crime he was found to have committed were not proven--lack of permission is an element of vandalism, and the People failed to prove he had no permission to paint on the building wall. For the reasons set forth below, we disagree.

Discussion

At the time appellant spray-painted the building wall and the adjudication hearing was held, Penal Code section 594, subdivision (a) (hereinafter section 594(a)), provided: "Every person who maliciously (1) defaces with paint or any other liquid, (2) damages or (3) destroys any real or personal property not his or her own, ... is guilty of vandalism." Appellant's counsel argued appellant should not be found to have committed vandalism and the petition should not be sustained, in that lack of permission is an element of vandalism and the People failed to prove appellant lacked permission to spray- paint the building wall. The court concluded, based on the language of the statute, lack of permission was not an element of the offense but, rather, permission was a defense. It thereafter found appellant had committed the offense and sustained the petition.

While appellant's appeal was pending, section 594(a) was amended. (Stats. 1993, ch. 605, § 4.) It now provides: "Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, ... is guilty of vandalism: [¶] (1) Sprays, *1010 scratches, writes on, or otherwise defaces.[¶] (2) Damages. [¶] (3) Destroys. [¶] Whenever a person violates paragraph (1) with respect to real property belonging to any public entity, ... it shall be a permissive inference that the person neither owned the property nor had the permission of the owner to deface, damage, or destroy the property."

Appellant argues the provision as to the permissive inference makes it clear the Legislature considered lack of permission to be an element of vandalism. Since the prosecution failed to prove this element, appellant is entitled to reversal of the adjudication; double jeopardy protection bars retrial of the case.

In the People's view, the Legislature's failure to specify that lack of permission is an element of the offense means it is not and never has been an element, the permissive inference language notwithstanding. Therefore, the prosecution did not fail to prove its case. However, if the court concludes lack of permission is an element of the offense, then the element was added as a result of the 1993 amendment to section 594(a). If so, and the amendment is applied retroactively to appellant's case, double jeopardy protection does not apply and the People should be allowed to retry the case.

Where a statute is ambiguous, it requires construction by the court. Here, the amended statute is ambiguous. The permissive inference language allows an inference an actor had no permission to deface government property, but the language of the statute does not specify that lack of permission is an element of the offense, making it unclear whether or not it is an element. Thus, construction of the statute is necessary.

A statute is to be construed so as to give effect to the intention of the Legislature. (Code Civ. Proc., § 1859; *Landrum v. Superior Court* (1981) 30 Cal.3d 1, 12 [177 Cal.Rptr. 325, 634 P.2d 352].) To do so, " '[t]he court turns first to the words [of the statute] themselves for the answer.' [Citation.]" (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230 [110 Cal.Rptr. 144, 514 P.2d 1224].) The statutory language used is to be given its usual, ordinary meaning and, where possible, significance should be given to every word and phrase. (*Id.* at p. 230.) As stated in Code of Civil Procedure section

1858, "... where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Accordingly, a construction which renders some words surplusage should be avoided. (*California Mfrs. Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 836, 844 [157 Cal.Rptr. 676, 598 P.2d 836].) Moreover, "[w]ords must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. [Citations.]" (*Ibid.*) *1011

Additionally, in construing a statute, the duty of the court "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted." (Code Civ. Proc., § 1858.) (2) "It is ... against all settled rules of statutory construction that courts should write into a statute by implication express requirements which the Legislature itself has not seen fit to place in the statute." (*People v. White* (1954) 122 Cal.App.2d 551, 554 [265 P.2d 115]; see *Estate of Tkachuk* (1977) 73 Cal.App.3d 14, 18 [139 Cal.Rptr. 55].) The court must follow the language used in a statute and give it its plain meaning, " ' "even if it appears probable that a different object was in the mind of the legislature." ' " (*People v. Weidert* (1985) 39 Cal.3d 836, 843 [218 Cal.Rptr. 57, 705 P.2d 380].)

(1b) It is clear that in neither version of section 594(a) did the Legislature specify that lack of permission was an element of the offense of vandalism. Moreover, had the Legislature intended to make lack of permission an element it easily could have done so. In other criminal statutes, it has specifically stated that lack of permission or consent is an element of the offense. (See, e.g., Pen. Code, § 211 ["Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and *against his will*, accomplished by means of force or fear." (Italics added.)]; *id.*, § 261, subd. (a)(2) ["Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator ... [w]here it is accomplished *against a person's will* by means of force, violence, duress, menace, or fear ...." (Italics added.)]; *id.*, § 596 ["Every person who, *without the consent of the owner*, wilfully administers poison to any animal, the property of another, ... is guilty of a misdemeanor." (Italics added.)].)

As stated above, a statute is to be interpreted according to the words used, and the court is not to insert provisions omitted by the Legislature. (Code Civ. Proc., § 1858; *People v. White, supra*, 122 Cal.App.2d at p. 554.) Additionally, a statute should be interpreted in the context of the whole system of law of which it is a part. (*People v. Comingore* (1977) 20 Cal.3d 142, 147 [141 Cal.Rptr. 542, 570 P.2d 723].) Thus, if a statute "referring to one subject contains a critical word or phrase, omission of that word or phrase from a similar statute on the same subject generally shows a different legislative intent." (*Craven v. Crout* (1985) 163 Cal.App.3d 779, 783 [209 Cal.Rptr. 649]; accord, *Estate of Reeves* (1991) 233 Cal.App.3d 651, 657 [284 Cal.Rptr. 650].) The omission of language in either version of section 594(a) making lack of permission an element of the offense, when such language has been inserted in other criminal statutes to make lack of permission or consent an element of the offenses, is indicative of a legislative intent not to make lack of permission an element of vandalism. *1012

The permissive inference language suggests that the Legislature had in mind the notion that lack of permission was an element of the offense. But, as stated above, the court must follow the language used in a statute and give it its plain meaning, " ' "even if it appears probable that a different object was in the mind of the legislature." ' " (*People v. Weidert, supra*, 39 Cal.3d at p. 843.)

On the other hand, a construction of section 594(a) which does not include lack of permission as an element of the offense renders the phrase "nor had the permission of the owner" surplusage. If lack of permission is not an element of the offense, an inference that the actor lacked permission is unnecessary. Whether or not such an inference existed, the actor still could prove permission-and thus lack of malice-as a defense. Such a construction would violate the principles that a statute should be construed so as to give effect to all provisions, and words used therein should not be rendered mere surplusage. (Code Civ. Proc., § 1858; *California Mfrs. Assn. v. Public Utilities Com., supra*, 24 Cal.3d at p. 844.)

In addition to the rules of statutory construction, a valuable aid in ascertaining legislative intent may be the legislative history of a statute. (*California Mfrs. Assn. v. Public Utilities Com., supra*, 24 Cal.3d at p. 844.) The amendment to section 594(a) was proposed as part of Assembly Bill No. 1179, 1993-1994 Regular Session (Assembly Bill No. 1179). According to a report prepared for hearing by the Assembly Committee on Public Safety on May 4, 1993, the purpose of the bill was "to elevate the sentences for vandalism for persons who have a prior

conviction where a term of imprisonment was served. If an individual knows he or she can get away with vandalism, they are going to continue to do it. Graffiti and vandalism generate public outrage," and "[t]he cost of graffiti removal is tremendous." More than that, the blight caused by graffiti "affects all communities" and causes "[t]urf wars" and gang violence, which can lead to murder. "When it comes to vandalism with a prior conviction, we need to look beyond the dollar value the tag caused and wake-up and recognize its link to gang violence, drug trafficking and all the associated social ills that affect neglected communities." The report defines vandalism in the language of section 594(a), and it mentions nothing about the question of permission.

The proposed amendment of section 594(a) was part of the amendment of Assembly Bill No. 1179 on May 17. The report prepared for the Assembly Committee on Ways and Means hearing on June 2, following amendment of the bill on May 17, refers to Assembly Bill No. 1179 as the "1993 California Graffiti Omnibus Bill" and notes the purpose of the bill is to "enhance the punishment for graffiti." It mentions nothing about the proposed amendment to section 594(a) or the issue of permission. *1013

The Senate Committee on Judiciary report for its July 13 hearing notes: "This bill would expand the definition of vandalism by replacing 'defaces with paint or any other liquid' with 'sprays, scratches, writes on, or otherwise defaces.' [¶] This bill would also provide a permissive inference that the person neither owned the property nor had the permission of the ownerto deface, damage, or destroy any real property owned by a governmental entity." However, the report does not further discuss the inference or the issue of permission. The same is true of the Senate Rules Committee report for its August 25 hearing, which followed the Senate's August 17 amendments to Assembly Bill No. 1179.

The Senate amended the bill again on September 7, then the bill was returned to the Assembly, which concurred in the amendments. The digest prepared for the Assembly vote again mentions the permissive inference but does not explain or discuss it. Neither does the Legislative Counsel's Digest prepared on Assembly Bill No. 1179.

As the foregoing shows, there is nothing in the legislative history of the amendment to section 594(a) to demonstrate a clear legislative understanding that lack of permission was an element of vandalism or an intent to change the law to make lack of permission an element of vandalism; the issue simply appears not to have been raised or discussed. This omission supports an inference, though not necessarily a strong one, the Legislature did not consider lack of permission to be an element of the offense or intend to change the law to make it an element. (*Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 508 [247 Cal.Rptr. 362, 754 P.2d 70].)

To summarize, there is nothing in the language of section 594(a), either before or after amendment, which specifically makes lack of permission an element of vandalism. There is nothing in the legislative history of the amendment which clearly demonstrates a legislative understanding that lack of permission was an element of the offense, although such an understanding could be inferred from the reference to permission in the permissive inference provision. Neither does the legislative history show an intent to change the law and make it an element. However, construing the statute in a manner which does not make lack of permission an element would render the phrase "nor had the permission of the owner" surplusage.

On balance, we hold the better construction of section 594(a) is that it does not now and did not before amendment make lack of permission an element of vandalism. While this construction does render some of the language in the amended statute surplusage, an undesirable result (*California Mfrs. Assn. v. Public Utilities Com., supra*, 24 Cal.3d at p. 844), it is *1014 consistent with legislative intent as expressed in the language of the statute. (Code Civ. Proc., § 1859; *Landrum v. Superior Court, supra*, 30 Cal.3d at p. 12; *Moyer v. Workmen's Comp. Appeals Bd., supra*, 10 Cal.3d at p. 230.)

Thus, the trial court did not err in finding appellant had committed vandalism and in sustaining the petition; lack of permission was not an element of the offense. The amendment of section 594(a) did not make it an element, so retroactive application of the amended statute would not benefit appellant. Therefore, we need not consider the issues of retroactivity and retrial.

The order is affirmed.

Ortega, J., and Vogel (Miriam A.), J., concurred. *1015

Cal.App.2.Dist.,1994.

In re Rudy L.

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C

Court of Appeal, Second District, Division 3, California.

Frank VALLEJOS, on behalf of himself and all others similarly situated,
Plaintiff and Appellant,
v.
CALIFORNIA HIGHWAY PATROL, Defendants and Respondents.
Robert E. FIELD, on behalf of himself and all others similarly situated,
Plaintiff and Appellant,
v.
The STATE of California, Defendants and Respondents.
Jeffrey Adrian VILLAGRAN, Plaintiff and Appellant,
v.
The STATE of California, Defendant and Respondent.

Civ. 53205, 53243 and 53265.

Feb. 26, 1979.
Hearing Denied May 10, 1979.

Plaintiffs brought action under Public Records Act alleging that highway patrol made illegal charges for copies of traffic accident reports. The Superior Court, Los Angeles County, George M. Dell, J., dismissed actions, and plaintiffs appealed. The Court of Appeal, Allport, J., held that: (1) written traffic accident reports prepared and retained by highway patrol during the year 1976 were "public records" under Public Records Act; (2) reports were not exempt from disclosure with respect to parties involved in incident or others who had proper interest in subject matter, and (3) where complaint failed to allege plaintiffs' status with respect to whether they were interested or proper parties entitled to disclosure of reports, complaint failed to state cause of action, but plaintiffs would be given opportunity to amend their complaints.

Reversed and remanded with instructions.

West Headnotes

[1] Appeal and Error ⚷854(1)
30k854(1) Most Cited Cases

Function of Court of Appeal on appeal is to review validity of ruling and not necessarily reason therefor.

[2] Records ⚷54
326k54 Most Cited Cases
(Formerly 326k14)

Written traffic accident reports prepared and retained by California highway patrol during the year 1976 were "public records" under Public Records Act. West's Ann.Gov.Code, § § 6250 et seq., 6252(d), 6257.

[3] Records ⚷60
326k60 Most Cited Cases
(Formerly 326k14)

Written traffic accident reports prepared and retained by highway patrol were not exempt from disclosure as being investigatory records compiled by a state agency with respect to parties involved in incident or others who had proper interest in subject matter. West's Ann.Gov.Code, § § 6252(d), 6254, 6254(f, k), 6255; West's Ann.Evid.Code, § § 1040, 1040(b)(2); West's Ann. Vehicle Code, § 20012.

[4] Records ⚷65
326k65 Most Cited Cases
(Formerly 326k14)

Burden of establishing exemption under Public Records Act is upon public agency. West's Ann.Gov.Code, § 6255.

[5] Records ⚷65
326k65 Most Cited Cases
(Formerly 326k14)

If public agency considered reports to be exempt under Public Records Act or otherwise not to be made public, burden was upon it to so demonstrate before preparing and delivering copies; if no claim of confidentiality or exemption from disclosure was then and there asserted, it would be deemed waived. West's Ann.Gov.Code, § § 6250 et seq., 6255.

[6] Records ⚷63
326k63 Most Cited Cases
(Formerly 326k14)

Where plaintiffs brought action under Public Records Act, alleging that highway patrol made illegal charges for copies of traffic accident reports but where complaints failed to allege plaintiffs' status with respect to whether plaintiffs were "interested or

proper parties" within statutory exceptions to exemptions from disclosure for investigatory records compiled by a state agency, complaints failed to state cause of action, but plaintiffs would be given opportunity to appropriately amend their complaints if facts permitted. West's Ann.Gov.Code, § § 6250 et seq., 6252(d), 6254(f, k).

[7] Appeal and Error ⚿856(2)
30k856(2) Most Cited Cases

Function of Court of Appeal on appeal does not include ab initio consideration of all of grounds of demurrer not considered below; function of Court of Appeal does not go so far as to render court law and motion department of superior court.

*782 **847 Laufer & Roberts, Kenneth P. Roberts, Encino, for appellants Vallejos and Villagran.

Merritt L. Weisinger, Weisinger, Frederick & Associates, Los Angeles, for appellant Field.

Evelle J. Younger, Atty. Gen., L. Stephen Porter, Asst. Atty. Gen., Henry G. Ullerich, Deputy Atty. Gen., for respondents.

ALLPORT, Associate Justice.

Frank Vallejos, Jeffrey Adrian Villagran and Robert E. Field appeal from orders of dismissal of their actions for restitution, accounting and injunctive relief following sustaining of general demurrers. At the request of defendants the three matters were consolidated for briefing, oral argument and decision by this court. The gravamen of the actions is that, during the year 1976, defendants made illegal charges for copies of traffic accident reports in violation of Government Code section *783 6257,[FN1] for which reimbursement is sought and against which practice an injunction is requested. The Vallejos and Field actions are brought as class actions.

FN1. Prior to its amendment effective January 1, 1977, Section 6257 provided:
"A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, provided such fee shall not exceed ten cents ($0.10) per page or the prescribed statutory fee, where applicable."

The reporter's transcript discloses that the three demurrers were heard on November 9, 1977, and each was sustained without leave to amend on the ground that the accident reports were not public records within the meaning of section 6257. No request for leave to amend was made by any of the parties and the actions were forthwith ordered dismissed.

The Issue

[1] Bearing in mind that our function on appeal in these cases is to review the validity of the ruling and not necessarily the reason therefor (Gonzales v. State of California (1977) 68 Cal.App.3d 621, 627, 137 Cal.Rptr. 681; Rupp v. Kahn (1966) 246 Cal.App.2d 188, 192, fn. 1, 55 Cal.Rptr. 108), we proceed to consideration of whether written traffic accident reports prepared and retained by the California Highway Patrol during the year 1976 were "identifiable public record(s)" for which reproduction costs were limited to ten cents per page.[FN2] We deem this to be the threshold, if not the only, issue before us. It was so considered by the court below and it has been so treated by all parties in their presentations on appeal. For reasons to follow we conclude these reports were "identifiable public records" and will therefore reverse.

FN2. Section 6257 was amended effective January 1, 1977, to read as follows:
"A request for a copy of an identifiable public record or information produced therefrom, or a certified copy of such record, shall be accompanied by payment of a fee or deposit to the state or local agency, provided such fee shall not exceed the actual cost of providing the copy, or the prescribed statutory fee, if any, whichever is less."

Discussion

[2] In 1968 the California Public Records Act, Government Code sections 6250 et seq., section 6252 subdivision (d) defined public records to include " any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." In Cook v. Craig (1976) 55 Cal.App.3d 773, 127 Cal.Rptr. 712, citizens sought copies of the *784 rules and regulations **848 of the department

governing the investigation and disposition of complaints of police misconduct. In holding the material requested to be public records this court said, at pages 781-782, 127 Cal.Rptr. at pages 716-717:

"THE CALIFORNIA PUBLIC RECORDS ACT
The PRA begins with a broad statement of intent: 'In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.' (s 6250.)
Like the federal Freedom of Information Act, section 552 et seq. of 5 United States Code, upon which it was modeled (see Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 652, 117 Cal.Rptr. 106), the general policy of the PRA favors disclosure. Support for a refusal to disclose information 'must be found, if at all, among the specific exceptions to the general policy that are enumerated in the Act.' (State of California ex rel. Division of Industrial Safety v. Superior Court (1974) 43 Cal.App.3d 778, 783, 117 Cal.Rptr. 726, 729.) To this end, subdivision (d) of section 6252 states that ' "(p)ublic records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.' The word 'writing' is itself defined comprehensively in subdivision (e) of section 6252: '(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.'
Defendants claim that nowhere in the PRA is the term 'public records' Defined, and that subdivision (d) of section 6252 is merely a statement of certain inclusions within the term and not its definition. Accordingly defendants urge a narrow meaning to the term, based upon cases interpreting it as used in other statutes. (See People v. Olson (1965) 232 Cal.App.2d 480, 486, 42 Cal.Rptr. 760; Nichols v. United States (D.Kan.1971) 325 F.Supp. 130, aff'd. on other grounds, 460 F.2d 671 (10th Cir.) cert. den. 409 U.S. 966, 93 S.Ct. 268, 34 L.Ed.2d 232 (1972).) Without quibbling over whether or not subdivision (d) of section 6252 is a 'definition' of the term 'public records,' the expression 'Any writing *785 containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics' is sufficiently broad to include the material sought by the plaintiffs. The breadth of the term 'public records' is further shown by certain exceptions in section 6254, such as subdivisions (a) exempting '(p)reliminary drafts . . . which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding such records clearly outweighs the public interest in disclosure; . . .' (g) exempting test questions for examination, and (j) exempting '(l)ibrary and museum materials made or acquired and presented solely for reference or exhibition purposes.'
We therefore conclude that the scope of the term 'public records' as used in subdivision (d) of section 6252 does not depend upon the scope of the term as used elsewhere; defendants' cases interpreting it are thus inapplicable. " (Fn. omitted.)

Relying upon the rationale of Cook we are persuaded to hold that the traffic accident reports sought in the instant case are likewise public records within the meaning of the act. The language of section 6252 subdivision (d) is "sufficiently broad" to **849 include these reports within its definition as "containing information relating to the conduct of the public's business prepared . . . by any state agency."

"The Filing of a document imports that it is thereby placed in the custody of a public official to be preserved by him for public use. Because for a season its value is best conserved by maintaining its confidential character by excluding public gaze, it becomes no less a public record. (People v. Tomalty, 14 Cal.App. 224, 232, 111 P. 513; Cox v. Tyrone Power Enterprises, Inc., 49 Cal.App.2d 383, 395, 121 P.2d 829.)" (People v. Pearson (1952) 111 Cal.App.2d 9, 30, 244 P.2d 35, 51.)

[3] The state does not seriously contend to the contrary, arguing strenuously however that the reports are exempt from disclosure under section 6254 subdivisions (f) and (k) as being investigatory records compiled by a state agency. In Cook v. Craig, supra, 55 Cal.App.3d 773, at pages 782-783, 127 Cal.Rptr. 712 at page 717, this court suggested such approach, saying:

"Defendants' justification for refusing to disclose that which was sought herein must be found, if at all, in the exemptions for particular records set out in section 6254, the 'islands of privacy upon the broad seas of enforced disclosure.' (Black Panther Party v. Kehoe, supra, 42 Cal.App.3d at p. 653,

117 Cal.Rptr. 106, at p. 110.)

*786 Section 6254 provides in part: 'Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:

'. . . 62

'(f) Records of Complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and Any state or local police agency, or any such investigatory or security files compiled by any other state or local agency for correctional, law enforcement or licensing purposes;

'. . .y o

'(k) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.' (Italics added.)" (Fn. omitted.) [FN3]

FN3. Subsection (2) of subdivision (b) of section 1040 of the Evidence Code provides: "(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing such information, if the privilege is claimed by a person authorized by the public entity to do so and:
(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered."

While it is true these reports are deemed confidential by Vehicle Code section 20012 and perhaps privileged under Evidence Code section 1040, for reasons to follow they may not be exempt from disclosure in these cases. While the general public is denied access to this information such is not true with respect to parties involved in the incident or others who have a proper interest in the subject matter. For example, subdivision (f) of Government Code section 6254 provides in part that:

"except that local police agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the persons involved in an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, ..."

*787 Vehicle Code section 20012 renders the reports confidential,

**850 "except that the Department of the California Highway Patrol or the law enforcement agency to whom the accident was reported shall disclose the entire contents of the reports, including, but not limited to, the names and addresses of persons involved in, or witnesses to, an accident, the registration numbers and descriptions of vehicles involved, the date, time and location of an accident, all diagrams, statements of the drivers involved in the accident and the statements of all witnesses, to any person who may have a proper interest therein, including, but not limited to, the driver or drivers involved, or the legal guardian thereof, the parent of a minor driver, the authorized representative of a driver, or to any person injured therein, the owners of vehicles or property damaged thereby, persons who may incur civil liability, including liability based upon a breach of warranty arising out of the accident, and any attorney who declares under penalty of perjury that he represents any of the above persons."

Thus there exists an obvious exception to the exemption granted by section 6254.

[4][5] Furthermore, the burden of establishing an exemption is upon the public agency. (s 6255.) If for some reason not apparent to us, the department did in fact consider the instant reports to be exempt under the act, or otherwise not to be made public, the burden was upon it to so demonstrate before preparing and delivering copies. If no claim of confidentiality or exemption from disclosure was then and there asserted it is deemed waived. (Cf. Black Panther Party v. Kehoe (1974) 42 Cal.App.3d 645, 656, 117 Cal.Rptr. 106.)

[6] The question remains are the plaintiffs in the instant actions " interested or proper parties" within the statutory exceptions. Presumably so but the complaints fail to allege their status in these respects

and for that reason do fail to state a cause of action. Under the circumstances it is appropriate to give plaintiffs an opportunity to amend their complaints in accordance with the views expressed herein in the event the facts so permit.

[7] Assuming arguendo that the reports come within the purview of section 6257, the state would have us sustain the demurrers on a number of other grounds not considered below. It is argued that the demurrers were properly sustainable on theories of governmental immunity, lack of payment under protest, as being improper class actions, as lacking compliance with claim statutes and that no cause for refund of money has been stated. It is also argued that the Villagran complaint failed to state a *788 cause of action under Civil Code section 3369. While it may be true that our function on appeal is to review the validity of the ruling below, not the reasons therefor, we do not perceive our function to include an Ab initio consideration of all of the grounds of the demurrer not heretofore considered below. It does not go so far as to render this court a law and motion department of the superior court. In view of our determination to allow time to amend, the propriety of the remaining grounds of demurrer can be considered in due course.

The order of dismissal in each case is reversed and the causes remanded with instructions for the court below to sustain the demurrers with leave to amend.

POTTER, Acting P. J., and COBEY, J., concur.

152 Cal.Rptr. 846, 89 Cal.App.3d 781

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▷

United States District Court,
N.D. California.

Yolanda BAUGH and Donyelle Baugh, Plaintiffs,
v.
CBS, INC., Group W Television, KPIX, and Dan Moguloff, Defendants.

No. C 93-0601 FMS (ARB).

June 22, 1993.

Crime victims who were filmed by news reporters in their home following domestic violence incident sued broadcaster, broadcaster's local affiliate, and owner of affiliate alleging various torts under California law after film was broadcast on television news magazine segment concerning victim assistance programs. On defendants' motions to dismiss or for summary judgment, the District Court, Fern M. Smith, J., held that: (1) news magazine program was entitled to protection under "news account" exception to liability under California statute governing claims for appropriation of likeness for commercial purposes; (2) genuine issue of material fact as to whether broadcast disclosed matters which were degrading to plaintiffs precluding summary judgment in favor of defendants on claim for disclosure of private facts under California law; (3) California's Uniform Single Publication Act barred plaintiffs' claims for intrusion on seclusion, trespass, unfair competition, fraud and intentional and negligent infliction of emotional distress to extent that claims relied on actual broadcast of news magazine segment, but not to extent that they relied on tortious physical intrusion into plaintiffs' home by news reporters; and (4) allegations stated claim for intentional infliction of emotional distress under California law.

Motions granted in part; denied in part.

West Headnotes

[1] Federal Civil Procedure ⚿1829
170Ak1829 Most Cited Cases

On motion to dismiss, court must accept as true all material allegations in complaint, as well as reasonable inferences to be drawn from them; however, court need not accept conclusory allegations, unreasonable inferences nor unwarranted deductions of fact.

[2] Federal Civil Procedure ⚿2491.5
170Ak2491.5 Most Cited Cases

Summary disposition is particularly favored in cases involving First Amendment rights. Fed.Rules Civ.Proc.Rule 56(e), 28 U.S.C.A.; U.S.C.A. Const.Amend. 1.

[3] Torts ⚿8.5(6)
379k8.5(6) Most Cited Cases

Under California law, claim for appropriation of likeness for commercial purposes may present one of two theories: first type of appropriation is right of publicity and arises from commercially exploitable opportunities embodied in plaintiff's likeness, and second type of appropriation is appropriation of name and likeness that brings injury to feelings, that concerns one's own peace of mind, and that is mental and subjective. West's Ann.Cal.Civ.Code § 3344(a).

[4] Torts ⚿8.5(7)
379k8.5(7) Most Cited Cases

Crime victims failed to state claim for appropriation of likeness for commercial purposes under California statute based on use of film of them taken in her home by news reporters following incident of domestic violence in television news magazine segment concerning victim assistance program; although news magazine was not traditional news show, it was entitled to protection under "news account" exception to statute. West's Ann.Cal.Civ.Code § 3344(a, d).

[5] Torts ⚿8.5(7)
379k8.5(7) Most Cited Cases

Fact that network television news magazine program generated advertising revenue did not prevent broadcaster from claiming "news account" immunity from suit alleging appropriation of likeness for commercial purposes under California law. West's Ann.Cal.Civ.Code § 3344(a, d).

[6] Torts ⚿8.5(7)
379k8.5(7) Most Cited Cases

Whether broadcaster can claim "news account" immunity from claim of appropriation of likeness for commercial purposes under California law, appropriate focus is on use of likeness itself; if plaintiff's face was used in connection with news

account, then no liability may be found under "news account" exception to statute. West's Ann.Cal.Civ.Code § 3344(a, d).

[7] Torts 8.5(7)
379k8.5(7) Most Cited Cases

Broadcaster, by mixing videotape of plaintiffs made by news reporters following domestic violence incident in plaintiffs' home with other episodes in news magazine broadcast and sensationalizing event at plaintiffs' home, did not forfeit its "news account" protection under California law from plaintiffs' claim for appropriation of likeness for commercial purposes, where there was no claim that broadcast was false. West's Ann.Cal.Civ.Code § 3344(a, d).

[8] Torts 8.5(7)
379k8.5(7) Most Cited Cases

Although television news magazine program was not traditional news show, it was plainly "news or public affairs" broadcast in broad sense and was entitled to protection from plaintiff's claim under California law for appropriation of likeness for commercial purposes under "news account" exception to statute. West's Ann.Cal.Civ.Code § 3344(a, d).

[9] Torts 8.5(7)
379k8.5(7) Most Cited Cases

Even if television news magazine did not fit traditional notions of news, it was protected under category of "public affairs" from plaintiffs' claim for appropriation of likeness for commercial purposes under California law arising out of use of videotape of plaintiff in her home after domestic violence incident. West's Ann.Cal.Civ.Code § 3344(d).

[10] Torts 8.5(7)
379k8.5(7) Most Cited Cases

Because television broadcaster could have substituted another victim of domestic violence for plaintiff in making its television news magazine segment on victim assistance programs did not preclude broadcaster's "public interest" defense to plaintiff's suit under California law for appropriation of likeness for commercial purposes given limits imposed by California statute creating claim of appropriation of likeness for commercial purposes and California's preference for speedy resolution of free speech cases. West's Ann.Cal.Civ.Code § 3344(a, d).

[11] Torts 8.5(7)
379k8.5(7) Most Cited Cases

Right to be let alone and to be protected from undesired publicity is not absolute but must be balanced against public interest in dissemination of news and information consistent with democratic processes under constitutional guarantees of freedom of speech and of the press; when news or public affairs publications are involved, balance must be drawn strongly in favor of dissemination. U.S.C.A. Const.Amend. 1.

[12] Torts 8.5(7)
379k8.5(7) Most Cited Cases

Matters disclosed by television news magazine segment on victim assistance program which included videotape of plaintiff in her home following domestic violence incident went far beyond disclosure of facts publicly available in police report of domestic violence incident so as to state claim by plaintiff under California law for tort of disclosure of private facts, where news magazine segment did not merely broadcast facts contained in police report but broadcast event of domestic violence as it unfolded and effectively disclosed plaintiff's emotional and personal reactions to incident as well as her comments to victim's assistance employee.

[13] Records 54
326k54 Most Cited Cases

Disclosure of police report of domestic violence incident under California Public Records Act was proper, despite provision of Act that disallowed disclosure of name and address of victim of domestic violence, where Act allowed disclosure of location of crime which, in this case, effectively disclosed victim's address, and name of victim would be withheld under Act only if victim made formal request and victim failed to allege that she made any such request. West's Ann.Cal.Gov.Code § § 6254, 6254(f)(2).

[14] Federal Civil Procedure 2515
170Ak2515 Most Cited Cases

Genuine issue of material fact as to whether television news segment on victim assistance program disclosed facts that were "degrading" to victim of domestic violence who was depicted in program precluded summary judgment in favor of broadcaster on victim's claim under California law

for tort of disclosure of private facts.

[15] Torts 28
379k28 Most Cited Cases

Personal involvement of plaintiff in incident of domestic violence was not newsworthy as matter of law so as to bar plaintiff's claim against broadcaster under California law for tort of disclosure of private facts arising from broadcaster's use of videotape of plaintiff following incident of domestic violence on program featuring victim assistance programs, even though issue of domestic violence and story of victim assistance programs was newsworthy.

[16] Damages 49.10
115k49.10 Most Cited Cases

[16] Damages 50.10
115k50.10 Most Cited Cases

[16] Torts 8.5(4)
379k8.5(4) Most Cited Cases

[16] Torts 8.5(5.1)
379k8.5(5.1) Most Cited Cases

[16] Trade Regulation 862.1
382k862.1 Most Cited Cases

[16] Trespass 12
386k12 Most Cited Cases

Claims brought by plaintiff, who was subject of broadcast of television news magazine segment on victim assistance programs, for intrusion on seclusion, trespass, unfair competition, and intentional and negligent infliction of emotional distress were barred under California Uniform Single Publication Act to extent that claims relied on actual broadcast of news magazine segment; however, claims remained viable to extent they relied on tortious physical intrusion into plaintiff's home by television broadcast personnel if she did not knowingly consent to entry of reporters into her home. West's Ann.Cal.Civ.Code § 3425.3.

[17] Torts 16
379k16 Most Cited Cases

Nothing in language of California's Uniform Single Publication Act implied that California legislature intended to grant complete protection for any tortious act committed by investigative news reporters, simply because they eventually published story based on their investigations. West's Ann.Cal.Civ.Code § 3425.3.

[18] Damages 49.10
115k49.10 Most Cited Cases

[18] Damages 50.10
115k50.10 Most Cited Cases

Plaintiffs could not circumvent constitutional free speech protection available to television broadcasters by recasting privacy claims as other common-law torts such as intentional and negligent infliction of emotional distress. U.S.C.A. Const.Amend. 1.

[19] Constitutional Law 90.1(9)
92k90.1(9) Most Cited Cases

[19] Damages 49.10
115k49.10 Most Cited Cases

[19] Damages 50.10
115k50.10 Most Cited Cases

[19] Fraud 36
184k36 Most Cited Cases

[19] Torts 16
379k16 Most Cited Cases

[19] Trade Regulation 862.1
382k862.1 Most Cited Cases

[19] Trespass 23
386k23 Most Cited Cases

To extent that claims for intrusion on seclusion, trespass, unfair competition, fraud, and intentional and negligent infliction of emotional distress were based on actual publication of plaintiff's story by television broadcaster on news magazine segment, claims were barred by constitutional free speech protections; however, constitutional protections did not immunize prepublication activities by television broadcaster including physical intrusion into plaintiff's home by news reporters with video camera. U.S.C.A. Const.Amend. 1.

[20] Trespass 10
386k10 Most Cited Cases

Even public figure is entitled to prevent news

reporters from entering private home; that public figure can maintain trespass action against news reporter who climbs his fence, no matter how newsworthy ultimate story published by reporter.

[21] Trespass 13
386k13 Most Cited Cases

Allegations that television news reporters exceeded terms of consent given by plaintiff to enter her home following domestic violence incident by broadcasting videotape made in home failed to state claim for trespass under California law, where broadcasting occurred after news reporters left plaintiff's property.

[22] Trespass 2
386k2 Most Cited Cases

Under California law, trespass is strict liability tort in sense that defendant's motivation or good-faith belief is irrelevant.

[23] Trespass 25
386k25 Most Cited Cases

No trespass can be found under California law if actual consent to entry was given.

[24] Trespass 13
386k13 Most Cited Cases

Under California law, trespass claim exists where defendant exceeds scope of consent to entry given by plaintiff.

[25] Trespass 25
386k25 Most Cited Cases

Under California law, consent to entry does not have to be knowing or meaningful in order to bar action for trespass.

[26] Trespass 25
386k25 Most Cited Cases

Under California law, where consent to entry is fraudulent induced, but consent is nonetheless given, plaintiff has no claim for trespass.

[27] Torts 16
379k16 Most Cited Cases

Plaintiff who gave her consent to entry of her home by television news reporters had no remedy with regard to subsequent news broadcasts of videotape of her made in her home based upon intrusion on seclusion claim under California law.

[28] Torts 8.5(4)
379k8.5(4) Most Cited Cases

[28] Torts 16
379k16 Most Cited Cases

Under California law, intrusion on seclusion requires neither publication nor existence of technical trespass; nonetheless, as with intentional tort, consent is absolute defense, even if improperly induced.

[29] Trade Regulation 862.1
382k862.1 Most Cited Cases

Plaintiffs sought damages, and not merely restitutionary relief reflecting value of what was taken from them as result of television broadcast of news magazine segment including videotape of plaintiffs in their home following incident of domestic violence so that plaintiffs could not make claim against broadcaster for unfair competition under California law, where plaintiffs were seeking remedy for embarrassment and emotional distress caused by publication of incident at home and were not arguing that they could have sold their story to another network and that broadcaster effectively misappropriated value of their story. West's Ann.Cal.Bus. & Prof.Code § § 17200, 17203.

[30] Damages 149
115k149 Most Cited Cases

Allegations that television news reporters entered plaintiffs' home and misrepresented their identities in order to gain her consent to videotaping at time of domestic violence incident, that news reporter selected plaintiff specifically because incident of domestic violence had just occurred and knew that plaintiff was vulnerable and took advantage of her position were sufficient to state claim against news reporters for intentional infliction of emotional distress under California law.

[31] Damages 49.10
115k49.10 Most Cited Cases

No legal duty arose on part of television news reporters not to reveal embarrassing, private facts about plaintiff and her daughter after plaintiff notified

news reporters that she was misled about their intentions with respect to videotaping in her home following domestic violence incident and that she did not want her privacy breached, and thus, broadcaster's decision to go ahead with broadcast including videotape of plaintiff could not be basis for negligent infliction of emotional distress claim under California law.

[32] Fraud 44
184k44 Most Cited Cases

Allegations that included time and place of news reporter's alleged misrepresentations to plaintiff, but which failed to identify person making some of the misrepresentations was sufficient to plead fraud claim by plaintiff against news reporters for allegedly misrepresenting their intentions in entering plaintiff's home with their video cameras following domestic violence incident and subsequently broadcasting videotape on television news program, where no discovery had been allowed in case.

[33] Federal Civil Procedure 2515
170Ak2515 Most Cited Cases

Declaration supplied by television broadcaster's local affiliate and its owner that they merely acted as conduit for network's broadcast of television news magazine segment which included videotape of plaintiff in her home following domestic violence incident, and that none of their personnel were involved in videotaping at home was insufficient to justify grant of summary judgment to affiliate and its owner in action alleging various torts arising from broadcast of news magazine episode, where no discovery had yet been allowed in case.

[34] Arbitration 4.1
33k4.1 Most Cited Cases

Suit alleging various torts arising from television broadcast of episode of news magazine brought including film of plaintiff made by news reporters following domestic violence incident in her home would be removed from mandatory arbitration given complexity of issues in case. U.S.Dist.Ct.Rules N.D.Cal., Rule 500-3.

*749 Robert E. Kroll, Oakland, CA, John Douglas Moore, Stone & Moore, San Francisco, CA, for plaintiffs.

Neil L. Shapiro, Michelle D. Kahn, Brobeck Phleger & Harrison, San Francisco, CA, Douglas P. Jacobs, Los Angeles, CA, Douglas P. Jacobs, Madeleine Schachter, New York City, for defendants.

ORDER

FERN M. SMITH, District Judge.

Plaintiffs Yolanda Baugh ("Baugh") and her daughter, Donyelle Baugh, have filed suit alleging various torts arising from an episode of "STREET STORIES," a weekly news magazine produced and broadcast by Defendant Columbia Broadcasting System, Inc. ("CBS"). Plaintiffs have also named Group W Television, Inc., the owner of CBS' San Francisco affiliate KPIX-TV ("Group W"), and Dan Moguloff ("Moguloff"), field producer for STREET STORIES as Defendants. All Defendants move to dismiss the claims *750 or, in the alternative, for summary judgment. In addition, Defendant Group W moves for dismissal or summary judgment on the basis that it is merely a conduit of the network broadcast. Plaintiffs move for summary judgment on their trespass and unfair competition claim. Finally, Plaintiffs move for relief from the automatic referral to arbitration under Local Rule 500. For the reasons set forth below, the Court DISMISSES the claims for appropriation of likeness, intrusion on seclusion, trespass, unfair competition, and negligent infliction of emotional distress, but DENIES Defendants' motions with respect to the disclosure of private facts, fraud, and intentional infliction of emotional distress claims.

BACKGROUND

CBS describes STREET STORIES as a "weekly news and public affairs magazine." The segment at issue was entitled "Stand by Me" and was broadcast over the CBS Network on April 9, 1992 ("the Broadcast").

The Broadcast concerned the Mobile Crisis Intervention Team, run by the Alameda County District Attorney, which is designed to provide emergency assistance for crime victims. The Broadcast focused on the work of Elaine Lopes ("Lopes") who assists victims with emotional support, guidance through the judicial process, and other relevant services. CBS news correspondent Bob McKeown ("McKeown") followed Lopes and filmed several of her visits with crime victims, showing how Lopes provided needed guidance for these victims. McKeown's report also described how Lopes aided in successful prosecution of crimes

because she often provided victims with the emotional support they need to testify effectively. In addition, McKeown noted that the victims assistance program is funded entirely by fines levied against criminals and that the recession had made these fines more difficult to collect.

Later in the Broadcast, the voice of a police dispatcher is heard stating, "husband beat up wife. Broke windows in the house. And she's waiting there." Broadcast Transcript ("Tr.") at 11 (Declaration of Madeleine Schachter, Exh. 1). The Broadcast then showed footage of Lopes and others inside the victim's home:

McKeown: (Voiceover)
Minutes after the police arrive, Elaine Lopes and her team are on the scene. They're professional victims' advocates, trained to pick up the pieces of lives touched--sometimes shattered--by crime.
Unidentified Woman # 1: [FN1]

FN1. In the version broadcast over KPIX and KMST (Monterey, CA), Baugh's face was obscured. Donyelle Baugh's face was not obscured, however. In addition, some Bay Area viewers with cable TV have access to CBS affiliate KXTV (Sacramento, CA) which broadcast the unobscured version of STREET STORIES. For example, one of Baugh's former employers subscribes to Multivision cable in Fairfield, CA and viewed the unobscured version over KXTV. Decl. of Helen Summers at ¶ 5.

He started beating on me and kicking on me and hitting me in the face. And then he kept bullying at me, talking about, 'You ain't going to do nothing.' You know, just bullying me like, you know, he knew I was scared of him.
McKeown: (Voiceover)
This time it's a report of domestic violence.
(Sounds of woman crying)
Ms. Lopes:
I think you feel like you're--like right here on trial and you're not. OK?
(Footage of Lopes in car with McKeown)
Ms. Lopes:
We are helping them right from the beginning. You help them put the control back--you begin to put the control back because you're there at the beginning, a--you know, right after the crime has occurred.
(Footage of Lopes and others in victim's home)
Ms. Lopes:
It's OK. It's OK. Hey it's going to be OK. You know, hardest thing, probably is when you're having to sit here to give the officer the report, because he's going *751 to have to know every detail, everything that happened.
McKeown: (Voiceover)
Elaine's encouragement makes it easier for the victim to make her case.
(Footage of woman # 1 and police officer in kitchen)
Woman # 1:
He hit me.
Unidentified Police Officer # 1:
What do you mean, hit you? Did he punch you?
Woman # 1:
(Demonstrates attacker's stance) He was like this over me, doing like this. And he kicked me on the floor!
Officer # 1:
OK. That's what I was asking you ...
(Close-up of pamphlet: Victim and Witness Assistance, then footage of Lopes with woman # 1)
Ms. Lopes:
I'm Elaine. I'm the one that'll follow through today. And if I don't, you know, end up working with you through the court process--if it goes through the court process--I will assign one of my staff. But more than likely, it'll be me.
(Voiceover)
Once you've been victimized, your life will never be the same.
(Footage of Lopes and others leaving woman # 1's home)
Unidentified Woman # 2:
We'll be in touch, OK?
Woman # 1:
Yeah.
Woman # 2:
Thanks for letting us come in to talk to you.
Ms. Lopes:
And I'll talk to you tomorrow.
Woman # 2:
Bye, girls. Bye Danielle.

Tr. at 11-12.

Baugh presents the following version of the events that transpired at her home on January 21, 1992:

On January 21, 1992, I called the Oakland Police "911" emergency number to report an incident of domestic violence involving my husband and myself at our home ... The policeman and I were in the kitchen discussing the incident when I heard some people coming up the front steps and entering my home.

I ran to the front of the house, and told the intruders "Wait a minute. Who are you? Get the hell out of here." They withdrew out of the door, showing me no identification. I did not notice the video camera at that point.
The officer came out of the kitchen. In the presence of the people on my doorstep, the officer said something to the effect: "It's okay. They are from the DA's office. They are here to help you." The door was left ajar.
The officer said that the group was a mobile crisis team sent to assist victims of domestic violence.
On the strength of that assurance, made in front of the film crew and within their hearing, I allowed the people to enter my home, not realizing who they really were or what their actual purpose was.
I saw that one of the people entering my home held a video camera. I believe he was filming as he entered the home, and he might have been filming when I originally threw these people out of my home.
The people introduced themselves as members of a Victim-Witness program. A woman introduced herself as "Elaine," who turned out to be Elaine Lopes, the leader of the mobile crisis team. Elaine introduced me to another woman and a man. The others, two or three men, including the man with the camera, were not introduced.
I asked the group what the camera was for. One of the crew members said they were doing a segment on Elaine for the District Attorney's office.
The crew member did not say they were doing this for CBS, KPIX, or the Street Stories program. Nor did they mention that the film would be used commercially in any way.
*752 I said I had no objections to them doing some filming of Elaine for the DA's office, as long as *I* was not going to be on anyone's television. The crew member said, "Okay." If they had not agreed to my condition, Iwould not have permitted them to stay.

Declaration of Yolanda Baugh ("Baugh Decl."), ¶ ¶ 2-13.

Baugh further asserts that she did not find out that her story would be broadcast until March 23, 1992 [FN2] when Lopes mentioned, "Oh by the way, the show will be aired April 9," to which Baugh responded, "What show?" *Id.* at ¶ 17. Baugh asserts that the following events occurred:

> FN2. Baugh had several conversations with Lopes between January 21 and March 23 and Lopes never mentioned the film, CBS, or STREET STORIES during any of these conversations. Baugh Decl. ¶ 16.

I reminded her [Lopes] that I had told her and the others that I did not want to be on television. She told me, "It may be too late." She said she had no control over the situation. I told her she should do whatever necessary to prevent "Street Stories" from using me in the show.
Elaine said she would call the CBS producer in New York to discuss the problem, and then call me back. Later, she called me back and said CBS had already cut the film and it was going to be aired with me in it. I got the name and phone number of the CBS "Street Stories" producer, Dan Moguloff, from Elaine, and immediately called him from my office.
I told Mr. Moguloff who I was and reminded him I did not want any of my personal life aired on any television show. He said there was nothing he could do at that point, though he might be able to obscure my face on the screen. He was not sure he could obscure me, but there was no way to stop the show from airing. I told him that would not be sufficient. I told him that if I was on the show, I would take legal action and hung up on him ...
Before I left work, I wrote a letter to Mr. Moguloff demanding that my image not be used in the program, and again threatened legal action if my request was not honored ... I never heard from Mr. Moguloff again after sending the letter.
However, about a week later, I was contacted on the phone by a man who identified himself as a CBS lawyer in New York. In a rude, uncaring and arrogant tone, he told me that I had no case against CBS and there is nothing I could do.

Baugh Decl. ¶ ¶ 18-23.

ANALYSIS

[1] A motion to dismiss may not be granted unless it appears "to a certainty that the plaintiff would not be entitled to relief under any set of facts that could be proved." *Plaine v. McCabe*, 797 F.2d 713, 723 (9th Cir.1986). The Court must therefore accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from them. *NL Industries, Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir.1986). The Court, however, need not accept as true conclusory allegations, unreasonable inferences nor unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.), *cert. denied*, 454 U.S. 1031, 102 S.Ct. 567, 70 L.Ed.2d

474 (1981).

Defendants have alternatively moved for summary judgment. While no discovery has occurred because of General Order No. 34, the parties have submitted various declarations, a transcript of the Broadcast, and videotapes of the Broadcast. In order to withstand a motion for summary judgment, the opposing party must set forth specific facts showing there is a genuine issue of material fact in dispute. Fed.R.Civ.P. 56(e). Those facts must amount to "sufficient evidence favoring the [opposing] party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). In the absence of such facts, "the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986).

[2] Summary disposition is particularly favored in cases involving First Amendment rights. *753 *Okun v. Superior Court*, 29 Cal.3d 442, 460, 175 Cal.Rptr. 157, 629 P.2d 1369 (1981) ("speedy resolution of cases involving free speech is desirable to avoid a chilling effect upon the exercise of First Amendment rights") (quotation omitted), *cert. denied*, 454 U.S. 1099, 102 S.Ct. 673, 70 L.Ed.2d 641 (1981); *Baker v. Los Angeles Herald Examiner*, 42 Cal.3d 254, 269, 228 Cal.Rptr. 206, 721 P.2d 87 (1986), *cert. denied*, 479 U.S. 1032, 107 S.Ct. 880, 93 L.Ed.2d 834 (1987). In addition, some courts have imposed a heightened burden on the party opposing summary judgment. *See Wasser v. San Diego Union*, 191 Cal.App.3d 1455, 1461, 236 Cal.Rptr. 772 (1987) ("The standard for resolution of a summary judgment motion is not altered ... However, the courts impose more stringent burdens on one who opposes the motion and require a showing of high probability that the plaintiff will ultimately prevail in the case. In the absence of such showing the courts are inclined to grant the motion and do not permit the case to proceed beyond the summary judgment stage.").

I. Appropriation of Likeness for Commercial Purposes

[3] Plaintiff's appropriation claim is based on Cal. Civil Code § 3344(a) which provides:

> Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner or on or in products, merchandise, or goods, or for the purpose of advertising or selling, or soliciting purchases of products, merchandise, goods or services, without such person's prior consent ... shall be liable for any damages sustained by the person or persons injured as a result thereof.

[4][5][6] Such appropriation claims may present one of two theories. The first type of appropriation is the right of publicity and arises from the "commercially exploitable opportunities" embodied in the plaintiff's likeness. *Dora v. Frontline Video, Inc.*, 15 Cal.App. 4th 536, 542, 18 Cal.Rptr.2d 790 (1993). This case presents the second type of appropriation in which the "appropriation of the name and likeness [ ] brings injury to the feelings, that concern's one's own peace of mind, and that is mental and subjective." *Id.* Defendants argue that they are immune from liability for either type of appropriation, unless the appropriation constitutes pure commercial exploitation and is unrelated to legitimate newsgathering and dissemination. Indeed, the statute itself provides for a "news account" exception:

> For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

Cal Civil Code § 3344(d). Moreover, the fact that STREET STORIES generates advertising revenue does not prevent CBS from claiming news account immunity. *Leidholt v. L.F.P. Inc.*, 860 F.2d 890, 895 (9th Cir.1988) ("The fact that Hustler Magazine is operated for profit does not extend a commercial purpose to every article within it."). Rather, the appropriate focus is on the use of the likeness itself; if Baugh's face was used "in connection" with a news account, then no liability may be found.

[7] Plaintiffs argue that Defendants forfeited any privilege because the STREET STORIES broadcast was "patently false, misleading and sensationalized." Plaintiffs rely on *Eastwood v. Superior Court*, 149 Cal.App.3d 409, 425, 198 Cal.Rptr. 342 (1983), in which the court noted, "we do not believe that the Legislature intended to provide an exemption from liability for a knowing or reckless falsehood under the canopy of 'news.' We therefore hold that Civil Code section 3344, subdivision (d), as it pertains to news, does not provide an exemption for a knowing or reckless falsehood." Plaintiff argues that by mixing this videotape with other episodes in the broadcast, STREET STORIES sensationalized the event at the Baugh's home and forfeited its news account protection.

[8] Plaintiffs' argument fails. In *Eastwood* the

publication pertained to actor Clint Eastwood's involvement in a "love triangle" that never existed. In this case, there is no dispute that the broadcast was not "false" in the sense of *Eastwood*. See *754*Maheu v. CBS, Inc.*, 201 Cal.App.3d 662, 677, 247 Cal.Rptr. 304 (1988) (characterizing the holding of *Eastwood* as "had the article not been alleged to be entirely false, it would have come within the exemption set forth in Civil Code section 3344, subdivision (d)"). Defendants videotaped and broadcast an actual event that occurred at Plaintiffs' home. In addition, while STREET STORIES is not a traditional news show, it is plainly a "news or public affairs" broadcast in the broad sense and is therefore entitled to protection.

Plaintiffs would like the issue of "newsworthiness" submitted to a jury because it depends on community standards. *Virgil v. Time, Inc.*, 527 F.2d 1122, 1129 (9th Cir.1975). While a jury question may arise in many cases, it does not arise in this case. In the age of "channel-surfing," [FN3] news organizations are hard-pressed to disseminate information in a manner that will capture the viewers attention. STREET STORIES is simply one attempt at presenting news in a more compelling fashion. Subjecting news organizations to a jury trial every time they develop a new program format and style would place on unreasonable burden on the exercise on free speech. *See Wasser*, 191 Cal.App.3d at 1461, 236 Cal.Rptr. 772 (summary disposition "has become an approved method of resolving privacy cases, since protracted litigation would have a chilling effect on the exercise of free speech in the public forum").

> FN3. Since many viewers have remote controls, they can quickly switch among stations. TV programming faces increasing pressure to find ways to maintain viewers' attention.

[9] Moreover, California courts have indicated that § 3344(d) should be interpreted to cover a broad range of material. Even if the Court assumes that STREET STORIES does not fit the traditional notion of news, it undoubtedly is protected under the category of public affairs:

> Section 3344, subdivision (d) distinguishes between news and public affairs. We presume that the Legislature intended that the category of public affairs would include things that would not necessarily be considered news ... We also presume that the term "public affairs" was intended to mean something less important than news ... As has been established in the cases involving common law privacy and appropriation, the public is interested in and constitutionally entitled to know about things, people, and events that affect it.

Dora, 15 Cal.App. 4th 536, 546, 18 Cal.Rptr.2d 790 (1993 Cal.App. Lexis 473, *13).

[10][11] Finally, Plaintiffs argue that Defendants "public interest" defense evaporates when there is no need to use Plaintiffs' likeness. Since Defendants could have substituted another victim of domestic violence for Baugh, Plaintiffs argue that California courts would tilt the scales in favor of the Plaintiffs privacy interest, citing *Gill v. Curtis*, 38 Cal.2d 273, 239 P.2d 630 (1952) and *Gill v. Hearst Publishing Co.*, 40 Cal.2d 224, 253 P.2d 441 (1953). The *Gill* cases involved a picture of a couple in a romantic pose in an ice cream store and was used to illustrate an article entitled, "Love" in Ladies' Home Journal. In the first case, the California Supreme Court held that plaintiffs had stated a plausible claim for invasion of privacy because there was no pressing need for the use of plaintiffs' likeness. *Curtis* 38 Cal.2d at 281, 239 P.2d 630. In the second case, the California Supreme Court relied on the constitutional protection accorded to publications, "whether it be a news report or an entertainment feature" and concluded that "the photograph did not disclose anything which until then had been private, but rather only extended knowledge of the particular incident to a somewhat larger public than had actually witnessed it at the time of the occurrence." *Hearst*, 40 Cal.2d at 230, 253 P.2d 441. The key element that emerges from the *Curtis* cases is that "the right 'to be let alone' and to be protected from undesired publicity is not absolute but must be balanced against the public interest in the dissemination of news and information consistent with the democratic processes under the constitutional guaranties of freedom of speech and of the press." *Hearst*, 40 Cal.2d at 228, 253 P.2d 441. § 3344(d) makes clear, however, that when news or public affairs publications are involved, the balance must be drawn strongly in favor of dissemination. Given the limits imposed by § 3344(d) and California's preference for speedy resolution *755 of free speech cases, the Court finds that Plaintiffs have failed to state a claim for appropriation of likeness and therefore this claim is DISMISSED.

II. Disclosure of Private Facts

[12][13] Defendants argue that this claim must be dismissed for three independent reasons. First,

Defendants contend that the matters disclosed were not private facts because they were contained in a publicly available police report of the incident. This argument fails, however, because STREET STORIES did not merely broadcast the *facts* contained in the police report. STREET STORIES broadcast the event as it unfolded and effectively disclosed Yolanda Baugh's emotional and personal reactions to the incident as well as her comments to Lopes. The broadcast went far beyond disclosure of facts publicly available in the police report. [FN4]

FN4. In addition, it is not completely clear that the police report itself was publicly available. Defendants' counsel requested a copy of the police report pursuant to the California Public Records Act, Cal.Gov.Code § § 6254 *et seq.* While that request was approved, Plaintiffs contend that under § 6254(f)(2) the request should have been denied. § 6254(f)(2) exempts from disclosure the name and address of a victim of domestic violence. This subsection does allow disclosure of the location of the crime which, in this case, effectively discloses the victim's address. In addition, the name of the victim is withheld *only* if the victim makes a formal request and Plaintiffs have not alleged that Baugh made any such request. At this stage of the proceedings, it appears that disclosure of the record was proper.

[14] Defendants next argue that the facts disclosed were not "degrading." Domestic violence is an exceedingly complex area, and both Yolanda and Donyelle have a legitimate interest in maintaining the integrity and dignity of their family unit. The STREET STORIES broadcast undoubtedly disclosed matters which reasonable people might not want disclosed. At a minimum, this issue presents a question of fact which cannot be resolved at this stage of the proceedings.

[15] Finally, Defendants argue that the broadcast is absolutely privileged because it disclosed "newsworthy matters of legitimate public interest." Plaintiffs respond that whether the broadcast was newsworthy must be determined by a jury. For purposes of this tort, "a truthful publication is constitutionally protected if (1) it is newsworthy and (2) it does not reveal facts so offensive as to shock the community's notions of decency." *Briscoe v. Reader's Digest Association, Inc.*, 4 Cal.3d 529, 541, 93 Cal.Rptr. 866, 483 P.2d 34 (1971).

The Ninth Circuit has explained that "the function of the court is to ascertain whether a jury question [regarding community mores] is presented." *Virgil*, 527 F.2d at 1130. In considering this issue, "the line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake." *Id.* at 1129. In general, California courts are deferential to news stories regarding crime victims. *See Briscoe*, 4 Cal.2d at 536, 93 Cal.Rptr. 866, 483 P.2d 34 ("The circumstances under which crimes occur, the techniques used by those outside the law, the tragedy that may befall the victims--these are vital bits of information for people coping with the exigencies of modern life."). While the Court finds the issue of domestic violence and Lopes' story to be newsworthy, the Court is not yet convinced that Plaintiffs' personal involvement in an incident of domestic violence is newsworthy as a matter of law. The Court therefore DENIES the motion to dismiss the claim for disclosure of private facts.

III. Uniform Single Publication Act

[16] Defendants contend that Plaintiffs' remaining claims are barred under the Uniform Single Publication Act, Cal.Civil Code § 3425.3 which provides:

> No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition.

*756 California courts have given this section broad preclusive effect:

> The enactment of section 3425.3 of the Uniform Single Publication Act by the California Legislature reflected great deference to the First Amendment and sought to alleviate many problems presented in respect to tort actions where mass communications are involved. When the Legislature inserted the clause "*or any other tort*" it is presumed to have meant exactly what it said.

Strick v. Superior Court, 143 Cal.App.3d 916, 924, 192 Cal.Rptr. 314 (1983).

[17][18][19][20] This section bars any claims based on the *broadcast* of Plaintiffs' story. The Court therefore DISMISSES Plaintiffs' claims for intrusion on seclusion, trespass, unfair competition, fraud, and intentional and negligent infliction of emotional distress to the extent they rely on the actual broadcast of STREET STORIES. The claims remain viable, however, to the extent they rely on a tortious *physical* intrusion into Plaintiffs' home. At this stage of the proceedings, the Court must assume the truth of Plaintiffs' assertion that she did not knowingly consent to Defendants' entry into her home. While the publication of Plaintiffs' story may be privileged under § 3425.3, the initial intrusion, if an intrusion occurred, may not be. Any other interpretation would grant complete protection for any tortious act committed by investigative news reporters, simply because they eventually published a story based on their investigations. Nothing in the language of § 3425.3 implies that the California legislature intended such a result. [FN5]

FN5. This same argument applies to Defendants' constitutional arguments. Defendants correctly contend Plaintiffs cannot circumvent constitutional free speech protections by recasting privacy claims as other common law torts, such as intentional and negligent infliction of emotional distress. *See Blatty v. New York Times Co.*, 42 Cal.3d 1033, 1042-43, 232 Cal.Rptr. 542, 728 P.2d 1177 (1986). As a result, to the extent the remaining claims are based on the actual publication of Plaintiffs' story, they are barred. At the same time, these constitutional protections do not immunize pre-publication activities. For example, even a public figure is entitled to prevent news reporters from entering a private home. That public figure can maintain a trespass action against a news reporter who climbs his fence, no matter how newsworthy the ultimate story published by the reporter.

IV. Trespass and Intrusion on Seclusion

[21] Baugh admits that she consented to the entry of the camera crew into her home and that she consented to their videotaping her discussions with Lopes, but argues that she did so only because she was led to believe that the crew was making the film for the District Attorney's office and that it would not be used commercially. Baugh Decl. ¶ ¶ 11-13. Baugh further asserts that she explicitly informed the crew that she had no objections "to them doing some filming of Elaine for the DA's office, as long as I was not going to be on anyone's television" and that a crew member said "Okay." Baugh Decl. ¶ 13. Plaintiffs therefore argue that Baugh's consent was effectively rendered meaningless by the crew member's explicit misrepresentation of their purposes in filming her story.

[22][23] Trespass is a strict liability tort in the sense that the defendant's motivation or good faith belief is irrelevant. *Miller v. NBC*, 187 Cal.App.3d 1463, 1480-81, 232 Cal.Rptr. 668 ("The defendant is liable for an intentional entry although he has acted in good faith, under the mistaken belief, however reasonable, that he is committing no wrong."). At the same time, no trespass can be found if actual consent to entry was given. *Id.* at 1480, 232 Cal.Rptr. 668 ("Where there is a consensual entry, there is no tort, because lack of consent is an element of the [theory underlying the tort].").

[24] Plaintiffs argue that the consent was not effective because Defendants exceeded the terms of the consent given by Baugh. In general, California does recognize a trespass claim where the defendant exceeds the scope of the consent. Those cases involve defendants *whose intrusion on the land* exceeds the scope of the consent given, however. In this case, the camera crew acted within the scope of Baugh's consent while they were on the premises. If they exceeded the scope of Baugh's consent, they did so by broadcasting the videotape, an act which occurred after *757 they left Baugh's property and which cannot support a trespass claim. *See Mangini v. Aerojet-General Corp.*, 230 Cal.App.3d 1125, 1141, 281 Cal.Rptr. 827 (1991) ("A trespass may occur if the party, entering land pursuant to a limited consent, i.e., limited as to purpose or place, proceeds to exceed those limits by divergent conduct *on the land* of another.") (citations omitted). [FN6]

FN6. The case cited by Plaintiffs, *Civic Western Corp. v. Zila Industries, Inc.*, 66 Cal.App.3d 1, 17, 135 Cal.Rptr. 915 (1977) essentially reaches the same conclusion. In *Civic Western*, the defendant was a repossessor who entered the premises with plaintiff's consent but then proceeded to exceed the scope of the consent by unlawfully ejecting plaintiff's employees from the premises. These activities exceeded the limits of the consent "by

> divergent conduct *on the land* of another." *Id.* (emphasis added). Plaintiff has not cited any case in which the divergent conduct occurred after the defendant left the plaintiff's property.

[25][26] No California cases indicate that the consent must be knowing or meaningful and the Court does not find any reason to add that requirement to the tort. In a case where consent was fraudulently induced, but consent was nonetheless given, plaintiff has no claim for trespass. Of course, a plaintiff in this predicament may still have a remedy based on fraud or intentional misrepresentation.

In pursuing this claim, Plaintiff largely relies on *Miller*, in which an NBC news camera crew followed a paramedic team into the plaintiff's home after plaintiff suffered a heart attack. Under these circumstances, the court held that the victim's wife could maintain an action based on trespass, intrusion, and intentional infliction of emotional distress. In *Miller*, however, no member of the camera crew attempted to obtain plaintiff's consent; they simply barged in with the paramedics. *Id.* 187 Cal.App.3d at 1475, 232 Cal.Rptr. 668. *Miller* does not stand for the proposition that consent must be knowing. [FN7] The Court therefore DISMISSES Plaintiff's trespass claim. [FN8]

> FN7. Nor does *Dietemann v. Time, Inc.*, 449 F.2d 245 (9th Cir.1971). In *Dietemann*, the defendants gained consensual entry to plaintiff's home by misrepresenting their identity. Defendants then surreptitiously used a hidden camera to photograph plaintiff and a hidden microphone to record their conversation. In these circumstances, the Ninth Circuit found an invasion of privacy, but implied that no "technical" trespass had occurred. *Id.* at 247. In addition, plaintiff never consented in any way to the use of the camera or microphone, a key distinction between *Dietemann* and the present case.

> FN8. Plaintiffs' motion for summary judgment on the trespass claim is therefore DENIED.

[27][28] Plaintiffs' intrusion on seclusion claim suffers from the same defect. Intrusion on seclusion is shown when "one [ ] intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private concerns ... if the intrusion would be highly offensive to a reasonable person." *Miller*, 187 Cal.App.3d at 1482, 232 Cal.Rptr. 668 (citation omitted). Intrusion on seclusion requires neither publication nor "the existence of a technical trespass." *Dietemann v. Time, Inc.*, 449 F.2d 245, 247 (9th Cir.1971). Nonetheless, as with any intentional tort, consent is an absolute defense, even if improperly induced. *See e.g. Cobbs v. Grant*, 8 Cal.3d 229, 104 Cal.Rptr. 505, 502 P.2d 1 (1972) (where patient's consent to operation is not fully informed, but consent was nonetheless given, any damages from the operation must be recovered under a negligence theory not a battery theory). Baugh gave her consent and she therefore has no remedy under this theory. The Court DISMISSES the claim for intrusion on seclusion.

V. Unlawful Business Practices

[29] Plaintiffs' claim is based on Cal.Bus. & Prof.Code § 17200 and § 17203. There are two independent problems fatal to Plaintiffs' claim. First, Plaintiffs contend that the unlawful act giving rise to liability under § 17200 is the original trespass at Plaintiffs' home. Since the Court has not found that no trespass occurred, this basis for liability has been eliminated.

Second, § 17203 authorizes injunctions and restitutionary relief, but not damages. Plaintiffs argue that they are not seeking damages but are merely seeking restitutionary relief reflecting the value of what was taken from them. This theory is not plausible. *758 Plaintiffs are seeking a remedy for the embarrassment and emotional distress caused by Defendants' publication of the incident at her home. Plaintiff is not arguing that she could have sold her story to another network and that the CBS broadcast effectively misappropriated the value of her story. Under Plaintiffs' approach, any damage claim could be converted into an argument for restitution. § 17203 plainly did not intend such a result. [FN9] The Court DISMISSES Plaintiffs' claim for relief under this section. [FN10]

> FN9. § 17203 merely authorizes the court to makes orders "necessary to restore to any person in interest any money or property, real or personal, which may have been

acquired by means of such unfair competition."

FN10. Plaintiff's motion for summary judgment on the unfair business practices claim is therefore DENIED.

VI. Intentional and Negligent Infliction of Emotional Distress

[30] Both parties agree that a claim for intentional infliction of emotional distress must be based on "outrageous" conduct. Baugh has alleged that Defendants' personnel entered her home, and misrepresented their identity in order to gain her consent to videotaping, all at a time of extreme emotional vulnerability. Moreover, Defendants selected Baugh specifically because an incident of domestic violence has just occurred; they therefore must have known that Baugh was vulnerable and took advantage of her position. These allegations adequately state a claim for intentional infliction of emotional distress. *See Miller*, 187 Cal.App.3d at 1487, 232 Cal.Rptr. 668 (emotional distress claim viable even if camera crew did not have a "specific malicious or evil purpose"); *Bogard v. Employers Casualty Co.*, 164 Cal.App.3d 602, 616, 210 Cal.Rptr. 578 (1985) ("behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress"). At this stage of the proceedings, the Court cannot say that Defendants' behavior was not outrageous as a matter of law. *See Miller*, 187 Cal.App.3d at 1488, 232 Cal.Rptr. 668 (jury question of outrageousness presented where camera crew followed paramedics into heart attack victim's home). The motion to dismiss the intentional infliction of emotional distress claim is DENIED.

[31] Plaintiffs' negligence claim is based on the argument that "once Plaintiff notified Defendants that she was misled about their intentions with respect to the videotaping in her home and that she did not want her privacy breached, Defendants had a legal duty not to reveal the embarrassing, private facts about Plaintiff and her daughter." Plaintiff's Opposition at 22. There are two problems with this argument. First, Plaintiffs provide no authority for the proposition that a legal duty arises in this situation and the Court is not aware of any such authority. In the absence of a special duty, the decision to go ahead with the broadcast cannot be the basis for a negligence claim. The Court therefore DISMISSES the claim for negligent infliction of emotional distress.

VII. Fraud

[32] Defendants move for a more definite statement of Plaintiffs' fraud claim, as required by Fed.R.Civ.P. 9(b). Plaintiff has described the time and place of the alleged misrepresentations, but has failed to identify the persons making some of the misrepresentations. This omission is excusable, however, because the camera crew at Plaintiffs' home failed to provide their names. Since this case is governed by General Order No. 34, no discovery has been allowed. The Court finds that Plaintiffs have sufficiently pleaded their fraud claim at this stage of the proceedings. As discovery proceeds, Plaintiffs shall amend their complaint to specifically identify each individual alleged to have made a misrepresentation to Plaintiffs. The Court DENIES Defendants' motion for a more definite statement.

VIII. KPIX and Group W's Independent Grounds for Dismissal

[33] Group W and KPIX argue that they merely acted as a conduit for the network's *759 broadcast and that none of their personnel were involved in the videotaping at Plaintiffs' home. Under their theory, since they do not edit, review, or in any way control the network's production of STREET STORIES or its broadcast, they lack the requisite scienter for liability.

Group W and KPIX are liable only if their employees were directly involved in the incident at Plaintiffs' home or, in some way, prepared the STREET STORIES segment on Plaintiffs. Defendants have submitted several declarations, all asserting that no KPIX or Group W employees appeared at Plaintiffs' home. *See* Declaration of Stephen Hildebrant, ¶ 6; Supplemental Declaration of Rosemary Roach, ¶ 4 ("Lest there be any lingering doubt on this issue, I wish to clarify that no KPIX-TV cameraman, soundman, or other employee was involved in any way in the videotaping, writing, editing, or other production efforts for the STREET STORIES 1993."). Plaintiff has responded with a declaration from Donald Dunkel, a former journalism professor and currently news manager at an ABC affiliate, asserting that "from personal experience, I

am familiar with the various arrangements that are made between CBS, Inc. and its local affiliates ... I believe that in the majority of situations when CBS needs a local video camera crew to assist the preparation of a "Street Stories" segment in a major market like San Francisco, someone from the network calls the local affiliate, in this case KPIX, and schedules the use of an affiliate crew and equipment." Declaration of Donald Dunkel, ¶ 6, ¶ 10.

If this evidence had been submitted after full discovery, the Court would find it wholly insufficient to defeat summary judgment. It is not enough to show that CBS sometimes, or even usually, uses a camera crew supplied by the local affiliate; Plaintiffs cannot pin liability on Group W and KPIX unless they can identify specific employees who appeared at Plaintiffs' home. Because of restrictions imposed by General Order No. 34, however, no discovery has been allowed. The Court is therefore reluctant to grant summary judgment simply on the basis of declarations supplied by KPIX and Group W executives. Plaintiff is entitled to sufficient discovery to determine who supplied the camera crew and to determine the identity of each person who appeared at Plaintiffs' home on the evening of January 21, 1992.

The Court DENIES Group W and KPIX's independent motion for dismissal or summary judgment. The Court further ORDERS the parties to pursue immediate and inexpensive discovery sufficient to determine the identity of each member of the crew that appeared at the Baugh home. Unless this discovery shows involvement by Group W or KPIX employees, Plaintiffs shall dismiss Group W and KPIX within sixty (60) days after the identity of the camera crew is disclosed.

IX. Motion for Relief from Arbitration

[34] Plaintiffs move for relief from arbitration pursuant to local rule 500-3. Defendants oppose this motion but both parties agree that referral to the ENE program or to a settlement conference would be productive. Given the complexity of the issues surviving the motions to dismiss, arbitration is unlikely to resolve this case. The Court REMOVES this matter from mandatory arbitration.

CONCLUSION

For the reasons set forth above, the Court issues the following orders:

(1) The Court DISMISSES the claims for appropriation of likeness, intrusion on seclusion, trespass, unfair competition, and negligent infliction of emotional distress.

(2) The Court DENIES Defendants' motions with respect to the disclosure of private facts, fraud, and intentional infliction of emotional distress claims.

(3) The parties are ORDERED to pursue immediate and inexpensive discovery to determine the identity of the news crew that appeared at Baugh's home on January 21, 1992.

(4) The Court REMOVES this matter from the Court's mandatory arbitration program.

(5) The Court REFERS this matter to the Honorable Claudia Wilken for the purpose of *760 conducting an early settlement conference and designing a discovery schedule, if necessary. The parties shall contact Magistrate Judge Wilken's chambers forthwith to arrange the settlement conference.

SO ORDERED.

828 F.Supp. 745, 21 Media L. Rep. 2065

END OF DOCUMENT

AB 403

Page 1

GOVERNOR'S VETO

AB 403 (Romero)
As Amended September 7, 1999
2/3 vote

ASSEMBLY: 66-0 (April 29, 1999) SENATE: 40-0 (September 9, 1999)

ASSEMBLY: 68-0 (September 10, 1999)

Original Committee Reference: JUD.

SUMMARY : Creates the Access to Domestic Violence Reports Act of 1999. Specifically, this bill :

1) Requires each state and local law enforcement agency to provide to the victim, upon request, a copy of the police report relating to an incident of domestic violence, the incident report face sheet, or both. The copy of the incident report face sheet shall be made available to a victim during regular business hours to a victim of domestic violence no later than 48 hours after being requested. The incident report itself shall be made available to a victim during regular business hours and no later than five working days after being requested by a victim. These time periods may be extended to five working days for the face sheet and 10 working days for the incident report if the law enforcement agency demonstrates good cause why the report cannot be made available in the time specified.

2) Provides that a victim shall be entitled to one copy of the report provided free of charge.

3) Provides that the access to domestic violence reports created pursuant to this bill applies to reports made within five

years from the date of completion of the domestic violence incident report.

4) Appropriates $200,000 from the General Fund (GF) to the Department of Justice (DOJ) for the training of local law enforcement agencies on the enforcement of firearms laws at gun shows.

The Senate amendments :

1) Authorize law enforcement agencies to provide a copy of the face sheet of domestic violence incident reports in lieu of a copy of the report in its entirety.

2) Specifically require persons requesting copies of such reports to present identification at the time the request is made.

3) Clarify that the copy of the incident report face sheet shall be made available to a victim during regular business hours to a victim of domestic violence no later than 48 hours after being requested. The incident report itself shall be made available to a victim during regular business hours and no later than five working days after being requested by a victim. These time periods may be extended to five working days for the face sheet and 10 working days for the incident report if the law enforcement agency demonstrates good cause why the report cannot be made available in the time specified.

4) Provide that the access to domestic violence reports created pursuant to this bill applies to reports made within five years from the date of completion of the domestic violence incident report.

5) Add a $200,000 appropriation from the GF to DOJ for the training of local law enforcement agencies on the enforcement of firearms laws at gun shows.

AS PASSED BY THE ASSEMBLY , the bill:

1) Required each state and local law enforcement agency to provide to the victim, upon request, a copy of the police

report relating to an incident of domestic violence. Copies were to be provided without delay, except that any request made in person by the victim for a copy of a police report was required to be granted at the time the request is made.

2) Provided that a victim shall be entitled to one copy of the report provided free of charge.

3) Required the address and telephone number of the victim, and the names, addresses, and telephone number of any witnesses to be redacted from any report provided to the victim pursuant to this section.

FISCAL EFFECT : Unknown

COMMENTS : The author notes that "victims of domestic violence do not have an expedited method of obtaining police reports under existing law. Currently, victims of domestic violence must write and request that copies of the reports be provided by mail. It often takes between two and three weeks to receive the reports. Such a delay can prejudice victims in their ability to present a case for a temporary restraining order under" the Domestic Violence Prevention Act. This bill remedies that problem by requiring law enforcement agencies to provide a copy of the police report to the victim at the time the request is made if the victim personally appears.

The purpose of restraining and protective orders issued under the DVPA is to prevent a recurrence of domestic violence and to ensure a period of separation of the persons involved in the violent situation. According to the author, in the absence of police reports, victims may have difficulty presenting the court with proof of a past act or acts of abuse and as a result may be denied a necessary restraining order which could serve to save a victim's life or prevent further abuse. By increasing the availability of police reports to victims, this bill improves the likelihood that victims of domestic violence will have the required evidence to secure a needed protective order against an abuser.

In addition to the lack of immediate access to copies of police reports, the author points to the cost of obtaining such copies

as an additional obstacle to victims of domestic violence. "Victims often have to pay a fee for each report they request.

For example, in Los Angeles County the fee is $13 per report. These fees become burdensome for victims who need to chronicle several incidents of domestic violence. For some the expense may prove prohibitive."

GOVERNOR'S VETO MESSAGE :

I am signing Assembly Bill No. 403; however, I am deleting the $200,000 General Fund appropriation contained in Section 1.5.

AB 403 would appropriate $200,000 from the General Fund to the Department of Justice (DOJ) for training local law enforcement on the enforcement of firearm laws at gun shows.

Having recently signed legislation tightening regulation of gun shows, I support the need for additional training. However, primary responsibility for law enforcement at gun shows is a local responsibility, and I believe the Commission on Peace Officers Standards and Training is the appropriate state agency to provide training for local law enforcement officers.

If the Commission desires to contract with DOJ to provide such training, I will provide the necessary funding in the budget process.

This bill would also require local law enforcement agencies to make available to a victim one copy of a domestic violence incident report within a specified period of time.

I believe this is an important measure that will help victims of domestic violence obtain the documentation they need to secure restraining orders as quickly as possible.

Analysis Prepared by : Donna S. Hershkowitz / JUD. / (916) 319-2334

FN: 0003848

|SENATE RULES COMMITTEE | AB 403|
|Office of Senate Floor Analyses |
|1020 N Street, Suite 524 |
|(916) 445-6614 Fax: (916) |
|327-4478 |

THIRD READING

Bill No: AB 403
Author: Romero (D), et al
Amended: 9/7/99 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 4-0, 6/22/99
AYES: Vasconcellos, Burton, Johnston, Polanco
NOT VOTING: McPherson, Rainey

SENATE APPROPRIATIONS COMMITTEE : 13-0, 9/1/99
AYES: Johnston, Alpert, Bowen, Burton, Escutia, Johnson, Karnette, Kelley, Leslie, McPherson, Mountjoy, Perata, Vasconcellos

ASSEMBLY FLOOR : 66-0, 4/29/99 (Passed on Consent) - See last page for vote

SUBJECT : Domestic violence: victim access to law enforcement reports

SOURCE : Author

DIGEST : This bill requires law enforcement to provide domestic violence victims with one free copy of a domestic violence incident report, as specified.

Senate Floor Amendments of 9/7/99:

1. Appropriates $200,000 from the General Fund to the Department of Justice for training of local law enforcement of firearms laws at gun shows. These

CONTINUED

Page

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amendments relate somewhat to AB 1097 (Romero), which would appropriate $1.9 million to the Department of Justice for a proposed "Firearm Law Enforcement Unit," the duties of which would include reporting to the Legislature on specified data concerning gun shows. AB 1097 currently is in Senate Appropriations Committee.

2. Makes technical changes.

ANALYSIS : Under current law, a victim of domestic violence must request in writing that a copy of a domestic violence report be provided by mail. According to the author's office, the delay can make it difficult for a victim to establish a history of domestic violence in court in a timely manner when applying for a restraining order.

The bill would require all state and local law enforcement agencies to provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request.

A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made.

A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

The bill would require persons requesting copies under this

bill to present state or local law enforcement with identification at the time a request is made.

The bill provides that these provisions only apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incidence report.

The bill appropriates from the General Fund to the Department of Justice $200,000 for training local law enforcement agencies on the enforcement of firearm laws at gun shows.

The bill enacts "the Access to Domestic Violence Reports Act of 1999."

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

Fiscal Impact (in thousands)

Major Provisions	1999-2000	2000-01	2001-02	Fund
Reports potentially in excess of $150	Unknown increased mandated, reimbursable probably annually, and potentially significant			Local

SUPPORT : (Verified 9/8/99)

California State Sheriffs' Association
California Commission on the Status of Women
Los Angeles County Sheriff's Department
Association for Los Angeles Deputy Sheriffs
California Organization of Police and Sheriffs
The Legal Aid Foundation of Los Angeles
California Alliance Against Domestic Violence
California Child, Youth and Family Coalition
California Judges Association
California National Organization for Women
Family Law Section of the State Bar of California

□

California Peace Officers' Association
California Police Chiefs' Association
Doris Tate Crime Victims Bureau
California Shooting Sports Association
Outdoor Sportsmen's Lobby, Inc.
California Rifle and Pistol Association, Inc.

ARGUMENTS IN SUPPORT : The author states:

. . . Victims of domestic violence do not have an expedited method of obtaining police reports under existing law. Currently, victims of domestic violence must write and request that copies of the reports be provided by mail. It often takes between two and three weeks to receive the reports. Such a delay can prejudice victims in their ability to present a case for a temporary restraining order . . . (emphasis in original)

Victims often have to pay a fee for each report they request. For example, in Los Angeles County the fee is $13 per report. These fees become burdensome for victims who need to chronicle several incidents of domestic violence. For some the expense may prove prohibitive.

The Legal Aid Foundation of Los Angeles (LAFLA), which supports this bill, submits that this bill would promote provisions of the federal Violence Against Women Act (VAWA):

(VAWA) allow immigrant spouses and children of U.S. citizens and lawful permanent residents self-petition for their permanent resident status if they are the victims of domestic violence. The VAWA regulations require that an applicant submit police reports or other evidence documenting the abuse. Unfortunately, a significant number of our VAWA clients are unable to access police reports from the local police departments in Los Angeles because they cannot afford the fee for the reports . . . . AB 403's provision making police reports available to domestic violence victims free of charge will greatly assist those women who are seeking to fulfill the documentation requirements under VAWA . . . . For some of our clients seeking VAWA relief, time is of the essence and it is

imperative that they be able to obtain police reports as soon as possible.

ASSEMBLY FLOOR :
AYES: Aanestad, Ackerman, Alquist, Aroner, Bates, Battin, Baugh, Bock, Brewer, Briggs, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Frusetta, Gallegos, Havice, Hertzberg, Honda, House, Jackson, Keeley, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Margett, McClintock, Migden, Olberg, Oller, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes,

Romero, Runner, Scott, Shelley, Soto, Steinberg, Thompson, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Zettel
NOT VOTING: Ashburn, Baldwin, Calderon, Campbell, Floyd, Granlund, Kaloogian, Knox, Mazzoni, Nakano, Strickland, Strom-Martin, Wright, Villaraigosa

RJG:jk 9/8/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Appropriations Committee Fiscal Summary

	AB 403 (Romero)
Hearing Date: 9/1/99	Amended: 6/29/99 and as proposed to be amended
Consultant: Lisa Matocq	Policy Vote: Pub Saf 4-0

BILL SUMMARY:

AB 403 enacts the Access to Domestic Violence Reports act of 1999, as specified.

Fiscal Impact (in thousands)

Major Provisions	1999-2000	2000-01	2001-02	Fund
Reports	Unknown increased mandated, reimbursable costs and lost revenues to law enforcement agencies			General

STAFF COMMENTS: SUSPENSE FILE. Under current law, a victim of domestic violence must request in writing that a copy of a domestic violence report be provided by mail. According to the author's office, the delay can make it difficult for a victim to establish a history of domestic violence in court in a timely manner when applying for a restraining order. This bill requires state and local law enforcement agencies to provide one free copy of a domestic violence incident report to the victim, within 5 working days of the request (a copy of the face sheet within 48 hours), except as otherwise specified.

According to the California State Sheriff's Association (Association), reports are currently available for distribution within 3-12 days. By requiring the reports to be available within 5 working days of the request, there are unknown but probably minor, increased costs. In addition, there are unknown lost revenues since agencies

currently charge a fee of $5-$15 per report. The lost revenues are probably reimbursable. According to the Department of Justice's "Crime and Delinquency in California, 1997" report, there were about 220,000 domestic violence calls made to law enforcement agencies in 1997. For illustrative purposes, for every 10% of victims that request a free copy of the report, lost revenues could be $220,000 annually.

Original List Date: 5/18/2000
Last Updated: 1/6/2003
List Print Date: 03/06/2003
Claim Number: 99-TC-08
Issue: Crime Victims' Domestic Violence Incident Reports

Mailing Information: Draft Staff Analysis

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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EXHIBIT D

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY
AUDITOR-CONTROLLER

March 25, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

Review of Commission Staff Draft Analysis
County of Los Angeles Test Claim, CSM-99-TC-08
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

We enclose our review of the subject analysis which finds a reimbursable State-mandated program imposed under the referenced statutes.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

for J. Tyler McCauley
Auditor-Controller

JTM:JN:LK
Enclosures

Review of Commission Staff Draft Analysis
County of Los Angeles Test Claim, CSM-99-TC-08
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

Commission staff, in their March 6, 2003 analysis, find that a reimbursable State-mandated program is imposed on local law enforcement agencies under the [above captioned] test claim legislation.

We concur.

We disagree over the scope of reimbursable services. In this regard, staff dispute our allegation "... that preparation of a report is an "implied mandate" because, otherwise, victims would be requesting non-existent reports..." [Staff Analysis, page 9].

We maintain the obvious .... that reports must be prepared in order to be provided to victims. Both duties are mandated, not merely suggested.

Staff speculate that the domestic violence reports, which the legislature now requires to be provided victims, is really the old [pre-1986] generic incident report available to many types of victims [Staff Analysis, page 11], not the specific "domestic violence incident report", defined in Penal Code section 13730.

The problem with staff's contention here is that the legislature intended that domestic violence victims be provided with a domestic violence incident report, not a generic incident report. On this point, the statutory language [in Family Code section 6228] is plain and must be given effect:

> " (a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this

section, "domestic violence" has the definition given in Section 6211. [Emphasis added.]

(b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made. [Emphasis added.]

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

- - - - - "

Therefore, victims are to be provided "domestic violence incident reports" and only "domestic violence incident reports". Any other type of incident report will not do.

Section 13730 Reports

Penal Code section 13730 mandates that "domestic violence incident reports" be prepared. This mandate was found to be reimbursable by the Commission[1]. Therefore, this reporting duty was new, not required under prior incident reporting law.

[1] Commission staff attach a copy of Commission's final decision [CSM-4222] to their March 6, 2003 analysis, which provides, on page 2, that reimbursable costs include those incurred for "writing" domestic violence incident reports.

Now, "domestic violence incident reports" must be prepared-and-provided to domestic violence victims upon their request, without exception, in accordance with Family Code section 6228 and in accordance with Penal Code section 13730, as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995, requiring that:

> "(a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General. [Emphasis added.]
>
> (b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.
>
> (c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be identified on the face of the report as a domestic violence incident. A report shall include at least both of the following:
>
> (1) A notation of whether the officer or officers who responded to the domestic violence call observed any signs that the alleged abuser was under the influence of alcohol or a controlled substance.
>
> (2) A notation of whether the officer or officers who responded to the domestic violence call determined if any law enforcement agency had previously

> responded to a domestic violence call at the same address involving the same alleged abuser or victim."

Accordingly, local law enforcement agencies must comply with the unambiguous mandate to prepare-and-provide domestic violence incident reports. Otherwise, local law enforcement agencies need not comply with the timely [five year period] request of a domestic violence victim, in accordance with both Family Code section 6228 and Penal Code section 13730 ... a result to be avoided according to the County's subject matter expert --- Bernice K. Abrams.

The Prepare and Provide Mandate

As noted in the declaration of Bernice K. Abrams [attached as Exhibit 1], on page 3, the duty to prepare and provide domestic violence incident reports to domestic violence victims was not made "optional" under Government Code section 17581[2], as claimed by Commission staff on page 2 of their March 6, 2003 Analysis.

---

[2] Government Code section 17581 deals with "[i]mplementation by local agencies of statutes or executive orders requiring state reimbursement" and provides that:

"(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 and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent 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 the 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.

Further evidence that the "prepare and provide mandate" was not made optional under Government Code section 17581 is apparent in that section 17581 only purported to make [Chapter 1609, Statutes of 1984's] report preparation optional, not preparing and providing reports, requested by victims, optional.

Also, section 17581 is not available to make the subject program "optional" as only an acknowledged State mandated program can be made "optional" [Government Code section 17581(1)(a)]. This acknowledgement has yet to occur for this mandated program to prepare and provide victim reports.

In addition, Section 17581 does not apply to the mandate to prepare and provide victim reports as this mandate is different than the mandate purportedly made optional in Chapter 1609, Statutes of 1984.

New Victim-Reporting

Comparing the provisions of reports prepared for the Attorney General [Chapter 1609, Statutes of 1984] with those prepared for victims [Chapter 1022, Statutes of 1999], the following differences are noted:

1. Chapter 1609, Statutes of 1984 does not require that a copy of the domestic violence incident report be given the victim. Under Chapter 1022, Statutes of 1999, it does.

(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.

(c) This section shall not apply to any state-mandated local program for the trial courts, as specified in Section 77203.

(d) This section shall not apply to any state-mandated local program for which the reimbursement funding counts toward the minimum General Fund requirements of Section 8 of Article XVI of the Constitution."

2. Chapter 1609, Statutes of 1984 requires copies to be given the Attorney General. Chapter 1022, Statutes of 1999 does not.

3. Chapter 1609, Statutes of 1984 does not require that fees be waived for a copy of the domestic violence incident report. Chapter 1022, Statutes of 1999 does.

4. Government Code section 17581(b) permits local law enforcement to continue to fund domestic violence incident report preparation pursuant to Chapter 1609, Statutes of 1984 when it is deemed "optional" by charging the user [Attorney General] a fee. Under Chapter 1022, Statutes of 1999, the [section 17581(b)] user [victim] fee authority is revoked.

5. Government Code section 17581(a) permits local law enforcement to stop preparing domestic violence incident report preparation pursuant to Chapter 1609, Statutes of 1984 if deemed "optional" on a year-to-year basis. Under Chapter 1022, Statutes of 1999, a Government Code section 17581(a) "optional" report preparation status would be in direct conflict with the Legislature's express intent in Chapter 1022, Statutes of 1999 to prepare and provide all reports as requested during a five year retention period.

6. The particular form and content of a domestic violence incident report, specified in Penal Code section 13730 [as added by Chapter 1609, Statutes of 1984], is not referenced in Chapter 1022, Statutes of 1999. If section 13730 were repealed, a victim would still have to be provided with a prepared "domestic violence incident report".

Therefore, the duty to prepare and provide domestic violence incident reports in Chapter 1022, Statutes of 1999 cannot be considered "optional".

Also, the subject domestic violence incident reporting for domestic violence victims is not "optional" because such reporting would then be purely a local matter --- would vary throughout the State. There would be no uniform and reliable method to assure victims that their reports would be available when they needed them --- precisely the result Chapter Chapter 1022, Statutes of 1999 was

designed to avoid. Under the test claim legislation, victim reporting is to be expedited, not frustrated.

Expedited Victim Reporting

The importance of Family Code section 6228, as added by Chapter 1022, Statutes of 1999, was that it expressly expedited victim reporting by requiring the timely preparation and provision of domestic violence incident reports to domestic violence victims. Consider the Legislature's purpose here.

In determining the Legislature's purpose in enacting Chapter 1022, Statutes of 1999, the case of Santa Barbara County Taxpayers Association v County of Santa Barbara 194 Cal.App.3d 674, 677[3] is instructive. According to Santa Barbara:

> "[O]ne ferrets out the legislative purpose of a statute by considering its objective, the evils which it is designed to prevent, the character and context of the legislation in which the particular words appear, the public policy enunciated and vindicated, the social history which attends it, and the effect of the particular language on the entire statutory scheme". [Emphasis added.]

The Legislature's objective in Chapter 1022, Statutes of 1999 was to expedite, not relax or make "optional", domestic violence incident report preparation.

The provisions of Family Code subsections 6228(b) and 6228(c), as added by Chapter 1022, Statutes of 1999, impose explicit deadlines for the provision of domestic violence incident reports to victims:

> "(b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence

[3] Attached as Tab 17 in claimant's May 11, 2000 test claim filing with the Commission.

> incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made. [Emphasis added.]
>
> (c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made." [Emphasis added.]

Therefore, domestic violence incident reports must be prepared and provided to victims within strict time limits. There is no provision allowing local law enforcement agencies to exceed time limits or allowing local agencies not to prepare a report at all. Indeed, this was the evil which Chapter 1022, Statutes of 1999 was designed to prevent.

As noted by Tracey Jensen, of the Family Law Section of the State Bar of California, in a March 4, 1999 letter about AB 403 [Chapter 1022/99] to Larry Doyle, Chief Legislative Counsel[4], on page 2:

> "Law enforcement reports involving domestic violence are of great import to a victim seeking civil and/or criminal sanctions against the perpetrator. Such reports are also used by victims seeking citizenship through the federal Violence Against Women Act and compensation and other services through California's Victim-Witness program. Domestic violence survivors would receive such reports [under Chapter 1022, Statutes of 1999] at no cost and within a reasonable period of time whereas now they must obtain the reports on their own and pay any associated costs. Domestic violence survivors fleeing abuse should not have to incur the cost and inconvenience of obtaining such reports."

[4] Attached as Tab 18 in claimant's May 11, 2000 test claim filing with the Commission.

The public policy of expediting victims' reports so that "[d]omestic violence survivors fleeing abuse should not have to incur the cost and inconvenience of obtaining such reports" [quoted above] found clear expression in Family Code section 6228. For example, section 6228(a) provides in pertinent part that "... local law enforcement agencies shall provide, without charging a fee, one copy of all incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request."

In addition, these reports need not be requested right away by victims — but need to be available at the convenience of victims for five years "from the date of completion of the domestic violence incident report" [Family Code section 6228(e)]. Law enforcement agencies have no way of knowing which victims will eventually request their reports or when they will do so. Accordingly, reports for all victims must be promptly prepared and be available to all victims for five years.

Therefore, the implementation of Chapter 1022, Statutes of 1999 requires the uniform and reliable enforcement of domestic violence victims' rights to promptly obtain a free copy of their domestic violence incident reports and also requires reimbursement to local law enforcement agencies for the resulting costs of preparing, storing, retrieving, and copying these reports, as claimed herein.

Specific Reports

As noted by Ms. Abrams, in her attached declaration, the victim reports mandated here are new specialized reports, not generic police reports. In this regard, Ms. Abrams states, on page 2 of her declaration, that:

> "... domestic violence reporting was not first required in Chapter 1473, Statutes of 1968, as claimed by Commission staff on page 11 of their analysis, but subsequently required under the test claim legislation [Chapter 1609, Statutes of 1984] which mandated, in Penal Code section 13730(c), that each local law enforcement agency SHALL develop an incident report form that includes a domestic violence identification code by January 1, 1986.

... that ... Penal Code section 13730 also required that local law enforcement agencies abandon generic incident reports in reporting domestic violence incidents.

... that:

1. Current domestic violence laws were not in effect in 1968.
2. Domestic violence reporting forms were not in effect in 1968.
3. Prior to 1986, all incident reports were generic reporting forms for any crime.
4. New forms were developed to comply with Penal Code section 13730 in 1986.
5. Domestic violence restraining orders are difficult to obtain without the "complete [domestic violence] written report" of the incident, including all state mandated information."

Therefore, the duty to prepare and provide domestic violence incident reports to domestic violence victims requires that victims obtain new special reports ... requires a new reporting program.

In the case of Los Angeles County, as noted on page 3 of Ms. Abrams declaration, this new reporting program requires, for each victim report request, "... 30 minutes to prepare, 10 minutes to store [for five years], and 15 minutes to retrieve and copy..." .

As noted by Commission staff, "... [t]he test claim statute ... requires local law enforcement agencies to provide the information to victims free of charge" [Staff Analysis, page 12]. Therefore, fees such as those authorized under Government Code section 6253(b) "covering the direct costs of duplication of the documentation, or a statutory fee if applicable", are not available here [Staff Analysis, page 12] to recover costs incurred to prepare and provide victim reports as claimed herein.

The fee authority here is insufficient.

Insufficient Fee Authority

The State funding disclaimer, that a fee for this service be charged victims, is unavailable to defeat reimbursement of the County's "costs mandated by the State" here. [County's May 11, 2000 Test Claim, page 8] As previously discussed, such fees are clearly prohibited in the test claim legislation.

As insufficient fee revenue cannot finance this State mandated program to prepare and provide domestic violence incident reports, section 6 of article XIII B of the California Constitution requires that local law enforcement agencies be reimbursed for their "costs mandated by the State" in preparing and providing domestic violence incident reports. [County's May 11, 2000 Test Claim, page 8]

Accordingly, the State must finance this program ... a conclusion also noted by the State Department of Finance [Finance] in their analysis of the matter, attached as Exhibit 2.

State Financing

Mr. S. Calvin Smith, Program Budget Manager for Finance, states, in his June 16, 2000 analysis of the subject claim, that:

> "Family Code Section 6228 requires that state and local law enforcement shall provide one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request, without charging a fee. In addition, a copy of a domestic violence incident report face sheet or incident report shall be made available during regular business hours to victim of domestic violence within a specified time frame. This statute also applies to requests for face sheets or report made within five years from the date of completion of the domestic violence incidence reports.
>
> As a result of our review, we have concluded that the statute <u>will</u> result in costs mandated by the State." [Emphasis added.]

Mr. Smith attached a copy of Finance's Bill Analysis for Assembly Bill [AB 403] as issued on June 29, 1999, prior to enactment of AB 403 as Chapter 1022, Statutes of 1999 on October 10, 1999. This [AB 403] Bill Analysis, attached here in Exhibit 2, clearly informs the Legislature, on page 1, that "... AB 403 could result in one-time costs of $2,200,000 ... and ongoing costs of approximately $440,000 ...".

Further, regarding the new duties and costs imposed on local law enforcement in performing this new victim service, the Legislative Counsel, in their digest to Chapter 1022, Statutes of 1999[5], stated, in pertinent part, that:

> "Existing law establishes procedures for the prevention of domestic violence and provides both civil and criminal sanctions for acts of domestic violence.
>
> This bill would require each state and local law enforcement agency to provide, without imposing a fee, one copy of any domestic violence incident report face sheet, domestic violence incident report, or both, upon request, to a victim of domestic violence within a specified amount of time, thereby imposing a state-mandated local program.
>
> - - -
>
> The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000."

The Legislature also recognized the lost revenue to local law enforcement agencies when fees for domestic violence incident reports could not be charged victims. In particular, The Appropriations Committee's Summary for Assembly

[5] Attached as Tab 4 in claimant's May 11, 2000 test claim filing with the Commission.

Bill 403 [Chapter 1022, Statutes of 1999] for the September 1, 1999 hearing[6], states that:

> "... [T]here are unknown lost revenues since agencies currently charge a fee of $5 - $15 per report. The lost revenues are probably reimbursable. According to the Department of Justice's "Crime and Delinquency in California, 1997" report, there were about 220,000 domestic violence calls made to law enforcement agencies in 1997. For illustrative purposes, for every 10% of victims that request a free copy of the report, lost revenues could be $220,000 annually."

In addition, an earlier Appropriations Committee's Summary for Assembly Bill 403 [Chapter 1022, Statutes of 1999] for the August 16, 1999 hearing[7], found that:

> "Unknown increased mandated, potentially reimbursable [costs], probably in excess of $150,000 annually and potentially significant would be imposed."

> "[T]he [California State Sheriff's] Association estimates increased costs of $2.3 million annually in overtime alone since they believe they would have to implement a policy of completing all domestic violence reports within 2 days, regardless of whether or not a copy of the report is requested, in order to comply with the provisions of the bill. In addition, there are unknown lost revenues to law enforcement agencies for providing the copy free of charge."

The Assembly Committee on Appropriations report on AB 403 for the April 21, 1999 hearing[8] also recognized that costs would be imposed on local law enforcement agencies to provide a free copy of the requested reports and that such a program was a "reimbursable" "State mandated local program".

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[6] Attached as Tab 8 in claimant's May 11, 2000 test claim filing with the Commission.

[7] Attached as Tab 9 in claimant's May 11, 2000 test claim filing with the Commission.

[8] Attached as Tab 10 in claimant's May 11, 2000 test claim filing with the Commission.

Therefore, the Legislature clearly recognized the need to provide free domestic violence incident reports to victims and also recognized various costs thereby imposed on local law enforcement agencies to accomplish this end.

Accordingly, for all the reasons stated above, prompt and complete reimbursement of the costs incurred to provide and prepare domestic violence incident reports to victims, as claimed herein, is required.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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J. TYLER McCAULEY
AUDITOR-CONTROLLER

Review of Commission Staff Draft Analysis
County of Los Angeles Test Claim, CSM-99-TC-08
Penal Code Section 13730 as Added and Amended by
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Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, and for proposing, or commenting on, parameters and guidelines (Ps&Gs) and amendments thereto, and extension of time requests, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review of the Commission staff analysis of the subject claim, attached hereto.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

3/24/03; Los Angeles, CA — Leonard Kaye

Date and Place — Signature

Review of Commission Staff Draft Analysis
County of Los Angeles Test Claim [CSM-99-TC-08]
Penal Code Section 13730 as Added and Amended by
Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995
Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999
Crime Victims' Domestic Violence Incident Reports

Declaration of Bernice K. Abram

Bernice K. Abram makes the following declaration and statement under oath:

I, Bernice K. Abram, Sergeant, Sheriff's Department, County of Los Angeles, executed a declaration on April 26, 2000, supporting reimbursement for developing and implementing methods and procedures to comply with new State-mandated requirements in responding to and reporting domestic violence incidents, including requirements imposed under the subject law.

I declare that I have reviewed Commission staff's March 6, 2003 draft analysis of the subject claim.

I declare that domestic violence incident reporting for domestic violence victims, in accordance with Family Code section 6228, as added by Chapter 1022, Statutes of 1999, requires that:

(a) State and local law enforcement agencies shall provide, without charging a fee, one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request. For purposes of this section, "domestic violence" has the definition given in Section 6211.

(b) A copy of a domestic violence incident report face sheet shall be made available during regular business hours to a victim of domestic violence no later than 48 hours after being requested by the victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report face sheet is not available, in which case the domestic violence incident report face sheet shall be made available to the victim no later than five working days after the request is made.

(c) A copy of the domestic violence incident report shall be made available during regular business hours to a victim of domestic violence no later than five working days after being requested by a victim, unless the state or local law enforcement agency informs the victim of the reasons why, for good cause, the domestic violence incident report is not available, in which case the domestic violence incident report shall be made available to the victim no later than 10 working days after the request is made.

(d) Persons requesting copies under this section shall present state or local law enforcement with identification at the time a request is made.

(e) This section shall apply to requests for face sheets or reports made within five years from the date of completion of the domestic violence incident report."

I declare that it is my information or belief that domestic violence reporting was not first required in Chapter 1473, Statutes of 1968, as claimed by Commission staff on page 11 of their analysis, but subsequently required under the test claim legislation [Chapter 1609, Statutes of 1984] which mandated, in Penal Code section 13730(c), that each local law enforcement agency SHALL develop an incident report form that includes a domestic violence identification code by January 1, 1986.

I declare that it is my information or belief that Penal Code section 13730 also required that local law enforcement agencies abandon generic incident reports in reporting domestic violence incidents.

I declare that it is my information or belief that:

1. Current domestic violence laws were not in effect in 1968.
2. Domestic violence reporting forms were not in effect in 1968.
3. Prior to 1986, all incident reports were generic reporting forms for any crime.
4. New forms were developed to comply with Penal Code section 13730 in 1986.
5. Domestic violence restraining orders are difficult to obtain without the "complete [domestic violence] written report" of the incident, including all state mandated information.

I declare that it is my information and belief that Government Code section 17581 is insufficient in excusing the County from its duty to prepare and provide domestic violence incident reports to domestic violence victims in accordance with Family Code section 6228 and in accordance with Penal Code section 13730, as added by Chapter 1609, Statutes of 1984 and amended by Chapter 965, Statutes of 1995.

It is my information or belief that, in order to comply with the test claim legislation, a domestic violence incident report must be provided to the victim upon his or her request, without exception, which requires, on average, 30 minutes to prepare; 5 minutes to store, and 10 minutes to retrieve and copy as requested by domestic violence victims.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and to those matters, I believe them to be true.

03-24-03, County of Los Angeles
Date and Place

Signature

STATE OF CALIFORNIA GRAY DAVIS, Governor

DEPARTMENT OF FINANCE
915 L STREET
SACRAMENTO, CA 95814-3706

Exhibit 2
Page 1 of 5

June 16, 2000

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of May 18, 2000 the Department of Finance has reviewed the test claim submitted by the Los Angeles County (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 1022, Statutes of 1999, (AB 403, Romero), are reimbursable state mandated costs (Claim No. CSM-99-TC-08 "Crime Victim's Domestic Violence Incident Reports"). Commencing with page 1, of the test claim, claimant contends that the addition of Family Code Section 6228 by Chapter 1022/99 has resulted in new duties for law enforcement agencies, which it asserts are reimbursable state mandates.

Family Code Section 6228 requires that state and local law enforcement agencies shall provide one copy of all domestic violence incident report face sheets, one copy of all domestic violence incident reports, or both, to a victim of domestic violence, upon request, without charging a fee. In addition, a copy of a domestic violence incident report face sheet or incident report shall be made available during regular business hours to a victim of domestic violence within a specified time frame. This statute also applies to requests for face sheets or report made within five years from the date of completion of the domestic violence incidence reports.

As the result of our review, we have concluded that the statute will result in costs mandated by the State. If the Commission reaches the same conclusion at its scheduled June 29, 2000 hearing on the matter, the nature and extent of the specific activities required of Los Angeles County can be addressed in the parameters and guidelines which will then have to be developed for the program.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your May 18, 2000 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-8913 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

J. W. Mills
for

S. Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF JAMES A. FOREMAN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-99-TC-08

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.

2. We concur that the Chapter No. 1022, Statutes of 1999, (AB 403, Romero) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

3. Attachment B is a true copy of Finance's analysis of AB 403 prior to its enactment as Chapter No. 1022, Statutes of 1999, (AB 403, Romero).

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.

June 16, 2003
at Sacramento, CA

James A. Foreman

AMENDMENT DATE: June 29, 1999
POSITION: Oppose

BILL NUMBER: AB 403
AUTHOR: G. Romero

BILL SUMMARY: Domestic Violence: Reports to victims

This bill would require any state or local law enforcement agency to make one copy of a domestic violence incident report available to the victim upon request, as specified.

FISCAL SUMMARY

If the Commission on State Mandates determines that enactment of this bill creates a reimbursable state-mandated local program, then this bill would result in significant additional costs to the State. The "Crime and Delinquency in California, 1997" report issued by the Department of Justice indicates there were approximately 220,000 calls to law enforcement agencies in 1997 requesting assistance related to domestic violence. If we assume the cost of making a single copy of the police report available to every eligible victim of a domestic violence incident is two dollars (five to ten minutes of clerical staff time at $12 per hour), then enactment of AB 403 could result in one-time costs of approximately $2,200,000 (all reports for the previous five years, as authorized by the bill), and ongoing costs of approximately $440,000 annually ($2 × 220,000). We note that AB 403 would expressly prohibit the assessment of a fee for this service.

COMMENTS

Finance is opposed to this bill because it may result in significant one-time and ongoing costs to the State.

Under existing law, a victim of a domestic violence incident must request in writing that a copy of a domestic violence report be provided by mail. The author's office indicates that in certain cases, the length of time involved in this process can make it difficult for a domestic violence victim to establish a history of domestic violence in court in a timely manner when pursuing a protective or restraining order.

B 403 would require a state and local law enforcement agency to make a copy of a domestic violence incident report available to a victim of the domestic violence upon request, within regular business hours and no later than two working days after the victim's request. If the law enforcement agency, for good cause and in writing, informs the victim of the reasons why the report is not available in a particular case, the report would be required to be made available no later than 10 days after the request is made. The bill would provide that no fee shall be charged for this service. The bill would require compliance with its provisions if a request is made within five years of the date of the domestic violence incident report.

Analyst/Principal	Date	Program Budget Manager	Date
(0212) J. Foreman	7/7/99	S. Calvin Smith	
Todd Jerman for		J. W. Melby	7-7-99
Department Deputy Director		Original signed by Robert D. Miyashiro	Date JUL - 8 1999

Governor's Office:	By:	Date:	Position Noted
	NE	7/9/99	Position Approved ✓
			Position Disapproved

BILL ANALYSIS — Form DF-43 (Rev 03/95 Buff)

CGCG:AB403-8741.doc 7/7/99 9:42 AM

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the March 18, 1999 version include significant amendments which would do the following:

- Delete the proposed name for the enacted bill.
- Replace the proposed requirement that law enforcement agencies provide a copy of a domestic violence incident report with a requirement to make one copy available to the victim within two days of the victim's request, as specified.
- Require compliance with the bill's provisions for a request made within five years of the date of the domestic violence incident report.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 1999-2000	FC	2000-2001	FC	2001-2002	Fund Code
0820/Justice	SO	No		See Fiscal Summary					0001
2720/CHP	SO	No		See Fiscal Summary					0001

Mailing List

Claim Number: 99-TC-08
Issue: Crime Victim's Domestic Violence Incident Reports

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Ms. Harmeet Barkschat
Mandate Resource Services
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Ms. Susan Geanacou, Senior Staff Attorney
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Mr. Paul Minney,
Director, Middleton, Young & Minney, LLP
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Sacramento, California 95825

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Rancho Cordova, California 95670

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Mr. Jim Spano,
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
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Ms. Annette Chinn,
Cost Recovery Systems
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Mr. Michael Harvey, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Andy Nichols, Senior Manager
Centration, Inc.
12150 Tributary Pint Drive, Suite 140
Gold River, California 95670

Mr. Mark Sigman, SB90 Coordinator
Auditor-Controller's Office
4080 Lemon Street, 3rd Floor
Riverside, CA 92501

Post-it® Fax Note 7671 | Date 3/26/03 | # of pages ▶ 1
To Paula Higashi | From Leonard Kaye
Co. CSM | Co.
Phone # | Phone # 213-974-8564
Fax # 916-445-0278 | Fax #

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2766
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 26th day of March 2003, I served the attached:

Documents: Review of Commission Staff Draft Analysis, County of Los Angeles Test Claim, CSM-99-TC-08, Penal Code Section 13730 as Added and Amended by Chapter 1609, Statutes of 1984, Chapter 965, Statutes of 1995, Family Code Section 6228 as Added by Chapter 1022, Statutes of 1999, Crime Victims' Domestic Violence Incident Reports, County of Los Angeles Test Claim, *including a 1 page letter of J. Tyler McCauley dated March 25, 2003, a 14 page narrative, a 1 page declaration of Leonard Kaye dated March 24, 2003, a three page declaration of Sergeant Bernice K. Abram (Exhibit 1), Department of Finance's analysis (Exhibit 2), all pursuant to CSM-99-TC-08, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates – FAX (narrative only) and mailed the original set.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of March 2003, at Los Angeles, California.

Hasmik Yaghobyan