



COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION  
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J. TYLER McCAULEY  
AUDITOR-CONTROLLER

June 13, 2003

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

Dear Ms. Higashi:

**Review of Commission's Error of Law  
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 submit and enclose herein the subject review.

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

Very truly yours,

J. Tyler McCauley  
Auditor-Controller

JTM:JN:LK  
Enclosures

**Review of Commission's Error of Law  
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**

On June 6, 2003, Paula Higashi, Executive Director of the Commission on State Mandates [Commission] notified claimant County of Los Angeles [County] that Mr. Robert Miyashiro, Commission's Chairperson and designate of Mr. Steve Peace, Director of the State Department of Finance, directed Commission staff to prepare a request for reconsideration of Commission's decision on the subject matter, adopted on May 29, 2003.

Surprisingly, Mr. Miyashiro now insists that his own Commission's May 29, 2003 decision is in error. He claims that prior law was overlooked. Specifically, he finds that prior law "... which requires counties and cities to maintain records for two years" results in reversible error and negates Commission's well-documented, 16 page decision, that "... the activity of storing the incident reports and face sheets for five years was a reimbursable activity". The new finding suggested by Mr. Miyashiro is that only storing such documents for three years is really reimbursable.

The County disagrees.

There is no law prior [to Family Code section 6228, as added by Chapter 1022, Statutes of 1999] that required the County to store domestic violence incident reports and face sheets in a readily accessible format.

Storing domestic violence incident reports and face sheets in a readily accessible format cannot be accomplished with an archive or dead storage process, where retrieval of requested documents is typically slow, not accessible within 48 hours as generally required under Family Code section 6228, added by Chapter 1022, Statutes of 1999.

The prior law cited by Commission [Government Code sections 26202 and 34090] does not indicate whether records need to be "maintained" or "stored". Sections 26202 and 34090 only discuss when old records can be destroyed, not if or how such records are to be "maintained" or "stored".

The problem in finding an old duty to "store" domestic violence records and face sheets for two years is that there simply was none. There was only a duty not to destroy such records for two years --- not the same as the duty to "store" or "put aside for use when needed"<sup>1</sup>.

Clearly, Family Code section 6228, added by Chapter 1022, Statutes of 1999 was not surplusage and did not impose redundant or extended "storage" requirements on local government. Rather, the "storage" requirement imposed by Section 6228 was entirely new --- not found in Government Code sections 26202 and 34090.

Moreover, Government Code sections 26202 or 34090 cannot possibly be equivalent, or even similar to, the particular duty to store domestic violence incident reports and face sheet records in a readily accessible format similar to that imposed under Family Code section 6228 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

<sup>1</sup> As defined in Webster's New World Dictionary, Warner Books, page 589.

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. [Emphasis added.]

#### Other Record Retention Requirements

It should be noted that documents supporting a reimbursable claim must be retained and not destroyed for a period of time set forth in Government Code section 17558.5, subdivision (a) which requires that:

“(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”

Under this record retention scheme, if an initial payment for this claim was made in 2007 for costs incurred in 2000, records would have to be maintained for 10 years, [(2007+3) -2000].

Accordingly, even minimal record retention requirements like those found in Government Code sections 26202 and 34090 could require that the County refrain from destroying records for 5, 10 or more years.

### Section 6228 Storage Duties

As previously noted, the duty to store domestic violence incident reports and face sheets in a readily accessible format is not found in prior law. This is further evidenced when considering the particular types of duties reasonably related to implementing the five year storage requirement imposed under Family Code section 6228. In this regard, a copy of the County's declaration [of Mr. Arthur J. Davis] included with the County's submission of draft Parameters and Guidelines for Commission's May 29, 2003 decision, is attached hereto. Mr. Davis indicates that required reimbursable storage activities include:

1. Develop policies and procedures for the storage of domestic violence incident reports and face sheets in a readily accessible format for five years.
2. Itemize, label, package, transfer and ship domestic violence incident reports and face sheets for storage in readily accessible hard copy format, or for storage in a readily accessible microfilm format, or for storage in an electronic image format.
3. Receive, log-in, microfiche [if applicable], or electronically image [if applicable], classify, file and lock-up or secure [access to], in a readily accessible format, domestic violence incident reports and face sheets.
4. If a microfiche system is used, check each frame for completeness and clarity and reprocess deficient records.

5. Store domestic violence incident reports and face sheets in a readily accessible hard copy, microfiche, or electronic image format for five years.

6. Train each staff person on methods and procedures for storing domestic violence reports and face sheets.

7. The use of specialized software, hardware or contract services to create domestic violence incident reports and face sheets in a readily accessible hard copy, microfiche, or electronic image format is reimbursable. However, reimbursement is limited to the pro rata share of costs of reimbursable activities [specified above]."

The [above] duties, then, reflect the particular storage duties imposed under Family Code section 6228, not the failure-to-destroy [original paper records] standards promulgated in 1949 (Government Code section 34090) and in 1947 (Government Code section 26202). Today, such old standards are clearly not relevant.

Moreover, the Commission has not demonstrated or even addressed the nexus or logical connection between the old failure-to-destroy standards and those imposed under Family Code section 6228. Further, the Commission has put no facts in evidence supporting the proposition that the only duty owed victims requesting domestic violence incident reports and face sheets is that we fail to destroy them.

Accordingly, for all of the above reasons, the County finds that the Commission's motion to reconsider and redo its otherwise final May 29, 2003 decision, is, itself, erroneous and without merit ... clearly insufficient to support a new and surprising conclusion.



LEROY D. BACA, SHERIFF

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



**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 Arthur J. Davis**

Arthur J. Davis makes the following declaration and statement under oath:

I, Arthur J. Davis, Acting Assistant Director of Fiscal Operations, Sheriff's Department, County of Los Angeles, am responsible for recovering costs incurred to develop and implement methods and procedures to comply with new State-mandated requirements, including requirements imposed under the subject law.

I declare that domestic violence incident reports and face sheets must be stored in a readily accessible format, in accordance with Family Code section 6228, 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.
- (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

*A Tradition of Service*

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. [Emphasis added.]

I declare that it is my information or belief that domestic violence incident reports and face sheets must be stored in a readily accessible format, in accordance with Family Code section 6228, as added by Chapter 1022, Statutes of 1999, for five years from the date of completion of the domestic violence incident report.

I declare that it is my information or belief that, under law prior to Family Code section 6228, as added by Chapter 1022, Statutes of 1999, there was no State requirement to store domestic violence incident reports and face sheets in a readily accessible format.

I declare that it is my information or belief that storing domestic violence incident reports and face sheets in a readily accessible format cannot be accomplished with an archive or dead storage process, where retrieval of requested documents is typically slow, not accessible within 48 hours as required under Family Code section 6228, added by Chapter 1022, Statutes of 1999.

I declare that it is my information or belief that storing domestic violence incident reports and face sheets in a readily accessible format requires local law enforcement agencies to perform new State-mandated duties as illustrated in the attachment hereto.

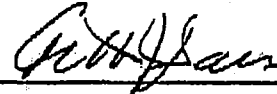


I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

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.

6/12/03 - Monterey Park, CA

Date and Place



Signature

**Attachment**  
**Declaration of Arthur J. Davis**

1. Develop policies and procedures for the storage of domestic violence incident reports and face sheets in a readily accessible format for five years.
2. Itemize, label, package, transfer and ship domestic violence incident reports and face sheets for storage in readily accessible hard copy format, or for storage in a readily accessible microfilm format, or for storage in an electronic image format.
3. Receive, log-in, microfiche [if applicable], or electronically image [if applicable], classify, file and lock-up or secure [access to], in a readily accessible format, domestic violence incident reports and face sheets.
4. If a microfiche system is used, check each frame for completeness and clarity and reprocess deficient records.
5. Store domestic violence incident reports and face sheets in a readily accessible hard copy, microfiche, or electronic image format for five years.
6. Train each staff person on methods and procedures for storing domestic violence reports and face sheets.
7. The use of specialized software, hardware or contract services to create domestic violence incident reports and face sheets in a readily accessible hard copy, microfiche, or electronic image format is reimbursable. However, reimbursement is limited to the pro rata share of costs of reimbursable activities [specified above].



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DEPARTMENT OF AUDITOR-CONTROLLER**

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500 WEST TEMPLE STREET, ROOM 525  
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J. TYLER McCAULEY  
AUDITOR-CONTROLLER

**Review of Commission's Error of Law  
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 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 and amendments thereto, reviews of State agency comments, Commission staff analyses, and for proposing, or commenting on, parameters and guidelines (Ps&Gs) and amendments thereto, statements of decision and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the attached review of Commission's error of law to the Statement of Decision motion for 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 attached document, 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.

6/13/03, Los Angeles, CA  
Date and Place

*Leonard Kaye*  
Signature

# Mailing List

**Claim Number:**

**99-TC-08**

**Issue:**

**Crime Victim's Domestic Violence Incident Reports**

Mr. Steve Shields  
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Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Mr. Paul Minney,  
Inspector, Middleton, Young & Minney, LLP  
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Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
80 Ninth Street, Suite 300  
Sacramento, California 95814

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State Controller's Office  
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Mr. Michael Harvey, Bureau Chief  
State Controller's Office  
Division of Accounting & Reporting  
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Mr. Mark Sigman, SB90 Coordinator  
Auditor-Controller's Office  
4080 Lemon Street, 3<sup>rd</sup> Floor  
Riverside, CA 92501

Post-it <sup>®</sup> Fax Note	7671	Date	6/13/03	# of pages	14
To	Paula Higashi	From	Leonard Kaye		
Co./Dept.		Co.			
Phone #		Phone #	913-974-8564		
Fax #	916-445-0276	Fax #			

*Originals in the mail*

**Mailing List**

**Claim Number:**  
**sue:**

**99-TC-08**  
**Crime Victim's Domestic Violence Incident Reports**

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Public Resources Management Group  
1380 Lead Hill Boulevard, Suite # 106  
Roseville, CA 95661

COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER



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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 13th day of June 2003, I served the attached:

Documents: Review of Commission's Error of Law, County of Los Angeles, Test Claim [CSM-99-TC-08], Penal Code Section 13730as Added and Amended by Chapter 1609; Statutes of 1995, Chapter 965; Statutes of 1999; Chapter 1022, Crime Victim's Domestic Violence Incident Reports, including a 1 page letter of J. Tyler McCauley dated 6/13/03, a 5 page narrative, a 4 page declaration of Arthur J. Davis, and a 1 page declaration of Leonard Kaye, 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

- 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 as well as mail of originals.
- by placing  true copies  original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- 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 13th of June, at Los Angeles, California.

  
Hasmik Yaghobyan