

May 31, 2013

# Analysis of Newly Identified Mandates

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LEGISLATIVE ANALYST'S OFFICE



## **BACKGROUND**

### **Analysis of Newly Identified Mandates**

Chapter 1124, Statutes of 2002 (AB 3000, Committee on Budget), requires the Legislative Analyst's Office (LAO) to (1) review each mandate included in the Commission on State Mandates' (CSM) semiannual report of newly identified mandates and (2) report to the Joint Legislative Budget Committee as to whether each mandate should be repealed, funded, suspended, or modified. This report—a compilation of mandate analyses published separately to our office's website earlier this year—is submitted in fulfillment of this requirement.

Between May 2012 and January 2013, the commission reported six new mandates to the Legislature.

- Domestic Violence Background Checks
- Identity Theft
- Modified Primary Election
- Mandate Reimbursements Process II
- Permanent Absentee Voters II
- Voter Identification Procedures

This report includes analyses of the six mandates shown above, as well as four mandates that the administration proposes the Legislature suspend in advance of the commission completing their work and reporting the mandates to the Legislature. These four mandates are:

- California Public Records Act
- Interagency Child Abuse and Neglect Investigation Reports
- Local Agency Ethics
- Tuberculosis Control

### **Mandate Process**

State law establishes the mandate determination process, which has three phases. In the first phase, a local government files a test claim with the CSM alleging that a new state law or regulation creates a reimbursable mandate and the CSM holds hearings to determine whether or not a reimbursable state mandate exists.

If the CSM determines that a reimbursable state mandate exists, the process moves into the second phase, in which the CSM—with input from the local government

claimant, Department of Finance (DOF), and other interested parties—adopts a methodology (“parameters and guidelines”) for local governments to follow in claiming state reimbursement.

In the final phase, which occurs at least six months after completion of the second, local governments submit initial claims for reimbursement. These claims, which typically include costs for multiple years, beginning with the fiscal year *preceding* the filing date of the initial test claim, serve as the basis for the statewide cost estimate that the CSM reports to the Legislature.

Pursuant to state law, the presentation of the CSM’s statewide cost estimate to the Legislature triggers the Legislature’s constitutional obligation to fund, repeal, or suspend the mandate. If the Legislature decides to fund the mandate, it must appropriate funds in the budget bill to pay the full amount reflected in the statewide cost estimate. Conversely, if the Legislature repeals or suspends the mandate, the state, while still liable for local government costs in years prior to the repeal or suspension, may defer reimbursement for prior-year local government costs to a later date. Under state law, local governments are not required to comply with mandates that are suspended in that year’s budget act.

## **DOMESTIC VIOLENCE BACKGROUND CHECKS**

### **Background**

Chapter 572, Statutes of 2001 (SB 66, Kuehl), made several changes to state law related to domestic violence proceedings in criminal and family courts. Among these changes, Chapter 572 required that in all criminal domestic violence cases prosecutors must (1) review specified criminal justice databases in order to identify prior convictions and current restraining orders issued against the defendant, (2) present this information to the court at the bail consideration hearing and when the court considers a plea agreement, and (3) send information regarding a new conviction or restraining order to any other California criminal courts with existing restraining orders involving the same or related parties.

*Mandate Decision.* In July 2007, the CSM found that the state must reimburse cities and counties for specified costs associated with the three requirements of Chapter 572 (described above) that local prosecutors review the criminal histories of defendants accused of domestic violence-related crimes and provide specified information to the courts. On September 28, 2012, based on claims filed by 25 cities and counties for 2001-02 through 2010-11, the commission estimated the state’s costs for this mandate to be \$15.9 million.

### **Governor’s Proposal**

The *2013-14 Governor’s Budget* proposes to suspend this mandate. Suspending the mandate would make local compliance with the above requirements optional in 2013-14. It also would allow the state to defer to a future date its obligation to pay the \$15.9 million owed to local governments. Under the State Constitution, the state must fully fund a mandate in the budget unless the Legislature suspends or repeals it. This

provision has been interpreted to mean that the Legislature may defer payment of prior-year costs for suspended or repealed mandates.

## **Analysis and Recommendations**

*Mandate Program's Requirements Unnecessary.* Based on our conversations with stake-holders and practitioners, we find that the requirements placed on local prosecutors by this mandate program are unnecessary to achieve the Legislature's objectives of ensuring that judges have pertinent information when setting bail, considering plea agreements, and reviewing restraining orders. This is because prosecutors routinely review and provide criminal history information to the court as part of their normal duties in criminal cases. In addition, judges are often required by law to consider similar information when making decisions, and frequently rely on prosecutors to provide that information as part of their normal responsibilities. In fact, we note that the Constitution, as well as statute not included in this mandate, already requires judges to consider the criminal histories of all defendants when setting bail. There is, however, no similar requirement on judges when reviewing plea agreements or restraining orders.

*LAO Recommendation.* We recommend that the Legislature eliminate future state costs for this mandate by amending statute to eliminate all the elements of state law that have been found to be a state-reimbursable mandate, as they are unnecessary to achieve the Legislature's objective of ensuring that judges have pertinent information regarding defendants' criminal histories. Some stakeholders and practitioners note that, without this mandate, some judges may be less likely to have domestic violence defendants' histories, especially in misdemeanor cases, which are often considered less serious than felonies. To the extent that this were to occur, judges could have an incomplete picture of a defendant's potential for future violence when making decisions related to bail, plea agreements, or existing restraining orders. We would note, however, that the judicial branch has been expanding the availability of criminal history databases (including the California Law Enforcement Telecommunications System and the California Court Protective Order Registry) in its courts, allowing judges and their staffs to more easily access information about an individual's criminal history and current restraining orders.

To the extent that the Legislature is concerned that eliminating this mandate would result in judges and prosecutors not consistently reviewing criminal histories before pertinent decisions in domestic violence cases, it could also amend state law to require judges to consider this information without specifically mandating that prosecutors provide it to them. Since the requirement would be placed on judges rather than local governments, this likely would not be considered a state-reimbursable mandate.

## **IDENTITY THEFT INVESTIGATIONS**

### **Background**

Chapter 956, Statutes of 2000 (AB 1897, Davis), made several statutory changes designed to make it easier for victims of identity theft to clear their names. The law

permits individuals who believe they are victims of identity theft to initiate a criminal investigation by filing a report with their local law enforcement agency, as well as seek an expedited judicial process certifying their innocence when their identity was falsely used in a crime. Committee analyses of the bill indicate that the Legislature expected these provisions to be state-reimbursable mandates but assumed that the costs would be minor.

*Mandate Decision.* In March 2009, the CSM found that local law enforcement costs associated with two elements of Chapter 956—requirements to take police reports on cases of suspected identity theft and begin subsequent investigations—are reimbursable. In September 2012, the commission adopted a statewide cost estimate of \$67.7 million based on claims submitted by about 200 cities and counties for the years 2002-03 through 2010-11.

### **Governor's Proposal**

The Governor's budget proposes to suspend this mandate in 2013-14. According to the administration, local law enforcement entities have inherent reasons to continue these activities even without state reimbursement. Suspending the mandate would make local compliance with the requirements of Chapter 956 optional in 2013-14. It also would allow the state to defer to a future date its obligation to pay the \$67.7 million owed to local agencies. Under the Constitution, the state must fully fund a mandate in the budget, unless the Legislature suspends or repeals it. This provision has been interpreted to mean that the Legislature may defer payment of prior-year costs for suspended or repealed mandates.

### **Recommendation**

We recommend the Legislature eliminate future state costs for this mandate by amending the requirements that local law enforcement agencies take a police report and begin an investigation when a person residing in their jurisdiction reports suspected identity theft. Specifically, we recommend that these local law enforcement activities be optional. In our view, taking police reports for and beginning investigations of alleged crimes—including identity theft—are basic responsibilities of local law enforcement agencies, and the associated costs should be borne by local governments and not the state. Based on conversations with organizations representing identity theft victims, we understand that there is a concern that suspending or repealing this mandate could lead to confusion among law enforcement agencies over who is responsible for creating police reports and initiating investigations when identity theft crimes involve victims and perpetrators located in different jurisdictions. Under our recommended approach, the Legislature could avoid such confusion by amending existing law to clarify its intent that these responsibilities should lie with the agency with the jurisdiction where the victim resides even when the suspected perpetrator resides in a different jurisdiction. Also, current law already states that in cases where the identity theft occurred in a different jurisdiction, local law enforcement agencies may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation.

## ELECTIONS

### Background

*Three Newly Identified Elections Mandates.* Over the last year, the CSM has identified three mandates relating to the procedures local governments follow in administering elections.

- ***Voter Identification Procedures.*** A provisional ballot is a regular ballot that has been sealed in a special envelope, signed by the voter, and then deposited in the ballot box. Provisional ballots may be required to prevent (1) unregistered individuals from voting or (2) registered voters from voting twice. Chapter 260, Statutes of 2000 (SB 414, Knight), requires local elections officials to compare signatures on provisional ballot envelopes with signatures on voter registration materials and, if the signatures do not match, reject the provisional ballot. The commission found that these voter identification requirements constitute a reimbursable mandate and estimated the statewide cost of this mandate to be about \$6.4 million.
- ***Permanent Absent Voters II.*** In the early 2000s, a series of legislation (Chapter 922, Statutes of 2001 [AB 1520, Shelley]; Chapter 664, Statutes of 2002 [AB 3034, Committee on Judiciary]; and Chapter 347, Statutes of 2003 [AB 188, Maze]) made all voters eligible for permanent absent voter status, instead of limiting eligibility to voters with specific disabilities or conditions. The commission ruled that local government costs to maintain lists of permanent absent voters is a reimbursable mandate and estimated its statewide cost to be about \$2.3 million.
- ***Modified Primary Election.*** Before 1996, California had a closed primary system that allowed only those voters affiliated with political parties to vote in party primaries. Proposition 198 (1996) created the blanket primary system that allowed voters not affiliated with political parties to vote in party primaries. After the U.S. Supreme Court determined in 2000 that the state's blanket primary system was unconstitutional, the Legislature approved Chapter 898, Statutes of 2000 (SB 28, Peace). Chapter 898 generally restored the law in place before 1996, but also allows voters not affiliated with political parties to participate in party primaries at the party's discretion. The commission ruled that local costs to comply with Chapter 898 was a reimbursable mandate, but that the scope of this mandate was reduced in 2010 when voters approved Proposition 14, establishing the open primary system in use today. Under the commission's ruling, local costs to comply with Chapter 898's requirements are reimbursable for all elections through 2010. In subsequent years, however, the only local costs that are reimbursable are those related to primary elections for President and elections for party officials (elections not affected by Proposition 14). The commission estimated the statewide cost of this mandate to be slightly over \$1 million.

***Six Long-Standing Election Mandates.*** Over the three decades that the state’s mandate laws have been in effect, the commission has identified many mandates relating to election procedures. Some of these earlier mandates have been repealed, but six remain. These long-standing mandates include the requirement that counties provide absentee ballots (the Absentee Ballots mandate) and hold a special election in cases when a candidate dies shortly before an election (the Brendon Maguire Act mandate). To achieve General Fund savings, the state suspended these six mandates every year since 2011-12—making local agency implementation of these election requirements optional. Despite the implementation of these elections mandates being optional since their suspension, local governments have continued performing the mandated functions.

### **Governor’s Proposal**

The Governor’s 2013-14 budget proposes to suspend the three newly identified elections mandates and continue suspending the six long-standing elections mandates. (Because the requirements of one new mandate and a similar long-standing mandate have been consolidated, the budget bill identifies eight elections mandates as proposed for suspension.) When a mandate is suspended, state statutes are not changed in any way, but each local government may choose whether or not to comply with the statutory requirements. Local governments are not required to notify the state if they decide not to implement a suspended mandate.

### **Analysis and Recommendations**

***State Has Interest in Election Uniformity.*** The state has a significant interest in maintaining uniformity in its elections. Many of the state’s elected officials serve districts that span multiple counties. Variation in election policies among those counties would result in voters in the same district having access to different voter programs. In a single state Senate district, for example, voters in one county might be allowed to vote absentee while voters with identical circumstances in an adjacent county may be denied an absentee ballot. Thus, suspending elections mandates could lead to inconsistencies in elections, voter confusion, and possibly lower turnout.

***Recommend Legislature Fund or Repeal All Elections Mandates.*** Suspending elections mandates poses a significant risk to state elections. Specifically, the longer the state suspends these mandates and the more elections mandates the state chooses to suspend, the greater the risk that at least one county will decide not to perform the previously mandated activities. Accordingly, we recommend that the Legislature fund these mandates in the budget bill. Based on prior claims and cost estimates from the commission, the cost of funding all the elections mandates would be about \$60 million for 2013-14, with ongoing costs of about \$30 million thereafter. If the Legislature determines that some or all of the mandates are no longer in the state’s interest, we recommend that the Legislature repeal the underlying statutes, as doing so would preserve elections uniformity while eliminating the need to reimburse local governments for the costs of the mandate. We believe that the administration’s proposal to suspend the mandates represents the worst option as it carries with it the largest risk for inconsistencies in California elections.

*Administration Should Explore Funding Alternatives.* Our office has previously noted that the existing process for reimbursing mandates can ignore efficiency, impose significant administrative burdens, and provide different amounts of reimbursements to similar local governments. In addition, for various reasons, state policies funded as reimbursable mandates often receive less thorough annual policy review than state policies implemented by state departments. For these reasons, we recommend the administration work with counties to (1) explore alternative, simpler mechanisms for funding election mandates (such as providing a set level of reimbursement for each voter in the county), and (2) assess whether some mandated requirements could be modified to realize the same goals at lower costs. The administration should submit its recommendations regarding elections mandates to the Legislature along with its 2014-15 proposed budget.

## **MANDATE REIMBURSEMENT PROCESS II**

### **Background**

State law created the CSM and established processes by which the CSM resolves disputes regarding the existence of state-reimbursable mandates and adopts methodologies local governments use to calculate the amount they may claim as reimbursement.

*CSM Process Determined to Be a Reimbursable Mandate.* In the 1980s, the CSM determined, in *Mandate Reimbursement Process I*, that local agencies are entitled to reimbursement for the administrative costs of filing successful mandate test claims and reimbursement claims. The Mandate Reimbursement Process I mandate has been suspended or inoperative in each fiscal year since 2005-06. (In 2006, in response to legislative changes to mandate law, the CSM reconsidered the Mandate Reimbursement Process I mandate and determined it was no longer reimbursable. In 2009, an appellate court ruling overturned the CSM's redetermination.)

*Mandate Test Claim Process Changed.* In 2004, the Legislature enacted Chapter 890, Statutes of 2004 (AB 2856, Laird) which, among other things, required mandate test claims submitted to the CSM to specify (1) the estimated cost of implementing the alleged mandate for the claimant, as well as local governments statewide, (2) other funding sources or local government fee authority that could be used to offset the costs of the alleged mandate, and (3) prior mandate determinations that may be related to the alleged mandate.

*Changes to Test Claim Processes Determined to Be a Mandate.* In 2010, the CSM determined, in *Mandate Reimbursement Process II*, that the above-described changes to the mandate test claim process are a state-reimbursable mandate. The Legislature has suspended this mandate since 2010-11.

### **Governor's Proposal**

The Governor proposes to continue suspension of this mandate in 2013-14, making the previously described requirements of Chapter 890 optional for local governments in



2013-14. The CSM's statewide cost estimate reports no costs associated with implementing this mandate, as no valid reimbursement claims were submitted during the initial filing period.

### **Recommendation**

The Legislature's decision as to whether or not to suspend this mandate should tie to its treatment of the Mandate Reimbursement Process I mandate. That is, if the Legislature intends to continue suspending the Mandate Reimbursement Process I mandate—as proposed by the Governor—it logically follows that the Mandate Reimbursement Process II mandate should be suspended as well.

From an intergovernmental relations standpoint, however, we have concerns with the continued suspension of the Mandate Reimbursement Process I and II mandates. Specifically, complying with the mandate reimbursement process as defined in state law is the only means for local governments to seek reimbursement for carrying out a state-reimbursable mandate. Although suspending the Mandate Reimbursement Process I and II mandates technically makes local government compliance with this process optional, local governments remain compelled to comply with this process to ensure they are successful in obtaining reimbursement for mandates as provided under the Constitution. For this reason, we advise against continual suspension of the Mandate Reimbursement Process mandates. Instead, we recommend the Legislature direct the administration to work with local governments to explore alternative methods of reimbursing local governments for the cost of filing for mandates claims, with the objective of reducing their costs.

## **CALIFORNIA PUBLIC RECORDS ACT**

### **Background**

In 1968, the Legislature enacted the California Public Records Act (CPRA) proclaiming that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The CPRA generally provides residents the right to inspect records held by state and local public entities and receive copies of identifiable public records upon request. Some public records, such as those related to pending litigation or that contain private personnel information, are exempt from disclosure under the CPRA. Public entities are permitted to collect fees to cover the reasonable cost of duplicating public records.

*Mandate Decision.* As the CPRA preceded the 1975 operative date of mandate law, its core provisions are not a state-reimbursable mandate. However, on May 26, 2011, the CSM determined that the following provisions of the CPRA, added after 1975, constituted state-reimbursable mandates.

- *Assistance in Seeking Records.* Chapter 355, Statutes of 2001 (AB 1014, Papan), required public entities to assist members of the public who lack sufficient

knowledge to identify and/or locate public records—including electronic records—that contain desired information.

- **Notification Requirements.** Chapter 982, Statutes of 2000 (AB 2799, Shelley), imposed additional notification requirements on a public entity that receives a request for a copy of a public record. Chapter 982 requires a public entity, within ten days from receipt of a request, to notify the requestor of whether or not the records sought may be disclosed. The entity's determination may extend beyond ten days under certain circumstances. If this occurs, the entity must notify the requestor in writing.
- **Employee Information.** Chapter 463, Statutes of 1992 (AB 1040, Mays), mandated K-14 and county offices of education to remove home addresses and telephone numbers of employees from records that are available for inspection by members of the public.

### **Governor's Proposal**

The Governor's budget proposes to suspend the CPRA mandate in 2013-14. Suspending this mandate would not affect local government obligations to comply with the provisions of CPRA that date from 1968, but would make local compliance with the provisions of Chapters 355, 463, and 982 (summarized above) optional in 2013-14. As the CSM has yet to issue a statewide cost estimate, the annual state cost of funding the CPRA mandate is uncertain. However, given the breadth of activities required by the CPRA mandate and the number of local governments affected, we estimate that annual state costs could reach the tens of millions of dollars.

### **Recommendation**

The activities required by the CPRA mandate clearly represent best practices for local governments in carrying out the main goal of the CPRA—facilitating access to public records. As such, all local governments should strive to perform these activities. Nonetheless, it is not clear that the state should pay local governments' costs to carry out the CPRA mandate provisions as the state has limited ability to ensure that local governments comply with these provisions and do so in a cost-effective manner. Instead, we believe decisions regarding whether and how to meet the CPRA mandate provisions and the responsibility of funding related activities should lie with local government officials and local residents—parties who have more control over local government compliance and costs. For this reason, we recommend the Legislature recast the CPRA mandate provisions as optional best practices—eliminating the state's responsibility to reimburse local governments for these activities. Under our approach, each year a local government would be required to either: (1) comply with the best practices or (2) announce at its first regularly scheduled public meeting that the local government will not meet the best practices. This approach would facilitate discussions between local government officials and residents about the costs and benefits of improved public access to local government records.

## INTERAGENCY CHILD ABUSE AND NEGLECT INVESTIGATION REPORTS

### Background

The Child Abuse and Neglect Reporting Act (CANRA) requires individuals in certain professional occupations (who are referred to as “mandated reporters”) to report child abuse and neglect to specified law enforcement agencies or county welfare and probation departments. The CANRA further requires local law enforcement, county welfare, and probation agencies (hereafter referred to collectively as “child protective agencies”) to forward certain reports of child abuse and neglect to the Department of Justice (DOJ) for entry into the state’s central child abuse and neglect reporting system, the Child Abuse Central Index (CACI). Since the 1980 enactment of CANRA, the law has been amended several times to include additional mandated reporters and specify additional reporting and investigative requirements of child protective agencies. As discussed below, the CSM has determined that several provisions of CANRA impose a state mandate on local governments.

*CSM Finds That Several Provisions of CANRA Are State Mandates.* In December 2007, the CSM found that the reenactment of previous child abuse reporting requirements in CANRA, and several subsequent amendments to CANRA (see Figure 1 [next page] for full list of chaptered legislation), created a reimbursable state mandate primarily for child protective agencies. The CSM determined that the following activities required by CANRA—collectively known as the Interagency Child Abuse and Neglect Investigation Reports (ICAN) mandate—create a reimbursable state mandate for child protective agencies.

- Distributing the mandated report form to mandated reporters.
- Accepting reports from mandated reporters when the agency lacks jurisdiction, and forwarding the report to the agency with jurisdiction.
- Referring, or “cross-reporting,” to other child protective agencies all reports of known instances of: (1) child abuse and neglect and (2) child deaths that are suspected to be related to child maltreatment.
- Investigating child abuse and neglect reports to determine if they are substantiated, inconclusive, or unfounded, and submitting a report to DOJ for cases that are not unfounded for entry in CACI.
- Notifying suspected child abusers of CACI reports related to them that are made to DOJ and informing mandated reporters of case disposition upon completing a child abuse or neglect investigation.
- Making “relevant information” available to a child custodian, guardian ad litem, appointed dependency court counsel, or licensing agency when a child protective agency is investigating child maltreatment and receives information from CACI.

**Figure 1**

**List of Statutes Related to  
ICAN Mandate**

Chapter 958, Statutes 1977 (AB 1058, Lockyer)  
Chapter 1071, Statutes 1980 (SB 781, Rains)  
Chapter 435, Statutes 1981 (AB 518, Kapiloff)  
Chapter 162, Statutes 1982 (AB 2303, Cramer)  
Chapter 905, Statutes 1982 (SB 1848, Watson)  
Chapter 1423, Statutes 1984 (SB 1899, Watson)  
Chapter 1613, Statutes 1984 (AB 2709, Vicencia)  
Chapter 1598, Statutes 1985 (AB 505, Leonard)  
Chapter 1289, Statutes 1986 (AB 1981, N. Waters)  
Chapter 1496, Statutes 1986 (AB 3608, Agnos)  
Chapter 82, Statutes 1987 (AB 80, Agnos)  
Chapter 531, Statutes 1987 (AB 1632, Leonard)  
Chapter 1459, Statutes 1987 (SB 1219, Presley)  
Chapter 269, Statutes 1988 (AB 3022, N. Waters)  
Chapter 1497, Statutes 1988 (SB 2457, Russell)  
Chapter 1580, Statutes 1988 (AB 4585, Polanco)  
Chapter 153, Statutes 1989 (AB 627, Bentley)  
Chapter 650, Statutes 1990 (SB 2423, Royce)  
Chapter 1330, Statutes 1990 (SB 2788, Russell)  
Chapter 1363, Statutes 1990 (AB 3532, Woodruff)  
Chapter 1603, Statutes 1990 (SB 2669, Presley)  
Chapter 163, Statutes 1992 (AB 2641, Speier)  
Chapter 459, Statutes 1992 (SB 1695, Royce)  
Chapter 1338, Statutes 1992 (SB 1184, Presley)  
Chapter 219, Statutes 1993 (AB 1500, Speier)  
Chapter 510, Statutes 1993 (SB 665, Russell)  
Chapter 1080, Statutes 1996 (AB 295, Baldwin)  
Chapter 1081, Statutes 1996 (AB 3354, Brown)  
Chapter 842, Statutes 1997 (SB 644, Polanco)  
Chapter 843, Statutes 1997 (AB 753, Escutia)  
Chapter 844, Statutes 1997 (AB 1605, Goldsmith)  
Chapter 475, Statutes 1999 (SB 654, Schiff)  
Chapter 1012, Statutes 1999 (SB 525, Polanco)  
Chapter 916, Statutes 2000 (AB 1241, Rod Pacheco)  
Chapter 468, Statutes 2011 (AB 717, Ammiano)<sup>a</sup>

<sup>a</sup> This statute was not originally part of the test claim, although it was considered by Commission on State Mandate staff in the March 12, 2013 draft proposed parameters and guidelines.

ICAN = Interagency Child Abuse and Neglect Investigation Reports.

- Keeping investigation records for reports made in CACI for as long as the child maltreatment record remains in CACI.

Additionally, the CSM found that the following activities required by CANRA create a reimbursable state mandate for child protective and other agencies that use CACI.

- Obtaining the original investigative report used to make the CACI report, and making an independent evaluation of the quality and sufficiency of the report as it relates to the agency's investigation, prosecution, employment, licensing, or child placement decisions.
- Notifying relative caretakers that they are in CACI if this information becomes available when an agency evaluates the placement of children with relatives.

*Subsequent Legislation Reduced Scope of Mandated Activities.* Following the 2007 CSM decision, Chapter 468, Statutes of 2011 (AB 717, Ammiano), specified that as of January 1, 2012, local law enforcement agencies no longer are required to report child abuse and neglect cases to CACI. As many of the ICAN mandated activities related to CACI reporting (including investigations and preparation of the CACI report), Chapter 468 significantly limited the scope of the ICAN mandate for local law enforcement agencies. By no longer requiring local law enforcement agencies to report to CACI, Chapter 468 reduced the requirements of this mandate related to notifying individuals when CACI reports are made about them, administering due process hearings for CACI reports, and retaining files for reports occurring after January 1, 2012. Additionally, Chapter 468 limited the number of reports that county welfare agencies are required to make to CACI to only those cases that are substantiated (prior law also required forwarding inconclusive reports).

*Draft Parameters and Guidelines.* The CSM released draft parameters and guidelines for reimbursement of the ICAN mandate on March 12, 2013 and is scheduled to consider them at its hearing on July 26, 2013. With one exception, the draft parameters and guidelines generally provide for a scope of reimbursable activities that is significantly less broad than some parties assumed based on the commission's 2007 statement of decision. For example, the proposed parameters and guidelines provide reimbursement for only those investigations required to substantiate a report of child maltreatment pursuant to CANRA. Further, the proposed parameters and guidelines do not provide reimbursement for investigative activities carried out by employees of child protective agencies acting in their capacity as mandated reporters. The draft further specifies that pursuant to Chapter 468, after January 1, 2012, law enforcement agencies are not eligible for reimbursement for activities related to child maltreatment investigations, file retention, and notifying individuals reported to CACI. In one respect, however, the parameters and guidelines are broader than parties would have assumed based on the commission's 2007 decision. Specifically, consistent with Chapter 468's amendments to CANRA (effective January 1, 2012), the draft parameters and guidelines allow local governments to claim reimbursements for their costs to provide due process hearings for individuals reported to CACI.

### **Governor's Proposal**

The Governor's budget proposes to suspend the ICAN mandate in 2013-14. Suspending this mandate would make local compliance with the provisions of the statutes (Figure 1) related to the ICAN mandate optional in 2013-14. As discussed below,

because there is no statewide cost estimate for this mandate at this time, the Governor's proposal would not result in any budgetary savings in 2013-14.

## **Analysis**

### *Suspension of ICAN Mandate Presents Several Concerns for Child Welfare System.*

The child abuse and neglect reporting required under the ICAN mandate represents, in most cases, a critical component of the state's child welfare system in that it affects how child abuse and neglect reports are received, how local governments share information about such reports, and the core functionality of CACI as a tool to identify suspected child abusers. For this reason, we believe that suspension of the ICAN mandate could:

- ***Weaken System of Child Abuse and Neglect Reporting.*** The ICAN mandate requires local governments to share information between agencies, assist mandated reporters in reporting child abuse and neglect, and submit reports to CACI. While local governments could voluntarily continue these activities if the mandate were suspended in 2013-14, it is unknown how many agencies would continue these activities. Cross-reporting child abuse and neglect between local law enforcement and child welfare agencies is a critical component of the state's child welfare system. Suspending the ICAN mandate could reduce the number of child abuse and neglect reports received, and could lead to undetected child abuse and neglect. Additionally, the provisions of the ICAN mandate that relate to assisting mandated reporters in making child maltreatment reports (through providing the mandated reporter form and accepting mandated reports even when a department lacks jurisdiction, and forwarding the report to the responsible agency), makes it easier for mandated reporters to report child abuse and neglect. In absence of this assistance from child protective agencies, it is possible that some reports of child abuse may not be filed.
- ***Reduce the Effectiveness of CACI.*** In suspending the requirement that child protective agencies (except law enforcement agencies, for which the requirement was eliminated in 2012) report substantiated cases of child abuse and neglect to CACI, the effectiveness of CACI as a tool to identify individuals previously suspected of child maltreatment is potentially weakened. It is conceivable that at least some portion of child welfare and probation agencies would no longer report child abuse and neglect to CACI if the mandate were suspended, although the extent to which this would occur is unknown.
- ***Undermine Due Process Rights of Individuals Reported to CACI.*** Suspending the ICAN mandate could also potentially undermine the due process rights of individuals reported to CACI. The ICAN mandate requires that agencies that make reports to CACI retain their investigative files, inform individuals when they are reported to CACI, and hold due process hearings for individuals contesting their CACI status. Suspending the ICAN mandate could reduce the

ability of individuals who are inappropriately reported to CACI to dispute their reports and have their names removed from CACI.

*No Near-Term State Savings From Suspending Mandate.* As of March 2013, the ICAN mandate is in the second phase of the mandate determination process: development of parameters and guidelines. At this stage, the Constitution does not require the Legislature to provide funding for a mandate in the annual budget, and in fact, no estimate of this mandate's cost is available. Based on the usual timeline for commission mandate determinations, we expect that the constitutional funding requirement for this mandate will become applicable in the 2014-15 fiscal year. Thus, the Governor's proposal to suspend the ICAN mandate in 2013-14 would not affect the state's 2013-14 budget. Suspending the mandate, however, would reduce the total bill for this mandate that will ultimately be presented to the Legislature (likely not until 2014-15) because local governments would not be eligible for reimbursement for activities carried out in 2013-14.

*Lack of Cost Information Complicates Decision...* Based on a review of prior, somewhat similar state mandates, we think that the annual costs for the ICAN mandate in 2013-14 could be in the range of a few million dollars to the low tens of millions of dollars. However, we caution that any estimate of annual costs for the ICAN mandate is subject to significant uncertainty at this time. The lack of reliable information on the costs of the ICAN mandate will make it very difficult for the Legislature to weigh the benefits of the mandated activities against their costs.

*...Nonetheless, Drawbacks of Suspension Appear to Outweigh Costs.* While costs for the ICAN mandate in 2013-14 are subject to significant uncertainty, the drawbacks of suspending the entire ICAN mandate without carefully considering actions to mitigate the potential adverse effects on the child welfare system are clear. In our view, based on information available and in light of the concerns arising from a suspension as discussed above, the drawbacks of suspension outweigh the reasonably anticipated increase in state costs payable in future years associated with keeping the mandate operative in 2013-14.

## **Recommendations**

*Reject the Governor's Proposal.* Because the drawbacks of suspending the ICAN mandate appear to outweigh the costs of keeping the mandate operative in 2013-14, we recommend the Legislature reject the Governor's proposal to suspend the ICAN mandate in 2013-14. As discussed above, rejecting the Governor's proposal would have no fiscal effect in 2013-14, but would add an unknown amount—associated with local government costs of carrying out the ICAN mandate in 2013-14—to the total reimbursement for prior year costs that the state must provide in the future.

*Establish a Workgroup to Evaluate the ICAN Mandate.* In 2014-15, the Legislature likely will be faced with a decision as whether to pay this mandate's full statewide cost estimate (the total cost of operating this mandate since 1999-00) or suspend the mandate. For this reason, we recommend that the Legislature establish a workgroup consisting of representatives from the DOF, Department of Social Services, DOJ, county

representatives, legislative staff, child welfare advocates, and other individuals with technical expertise in mandates to evaluate the ICAN mandate, develop options to limit its costs, and consider alternative reimbursement methods for funding its activities. We would suggest that the workgroup present recommended alternatives to the Legislature by the summer of 2013. Under this time frame, the Legislature would have time to evaluate these options and potentially take actions to modify the ICAN mandate and its associated future year costs before the end of this year's legislative session. At a minimum, we suggest the workgroup consider these questions:

- Would it be more appropriate and cost-effective for state agencies, instead of local governments, to carry out some of the mandated activities—such as file retention or administration of due process hearings?
- Could any of the mandated activities be made optional for local governments without causing undue harm to the child welfare system?
- Could the state provide local governments incentives to continue performing currently mandated activities instead of maintaining the statutes that require the activities?
- Could any current state funding streams to counties and cities—such as 2011 realignment funds or Proposition 172 sales tax revenues—be used to help offset the costs of the ICAN mandate?

## LOCAL AGENCY ETHICS

### Background

Chapter 700, Statutes of 2005 (AB 1234, Salinas), requires local governments to (1) adopt written policies detailing the circumstances—if any—under which elected officials are entitled to reimbursement for expenses and (2) provide specified ethics training to elected officials who receive a salary or other form of compensation.

*Mandate Decision.* In its review of Chapter 700, the CSM found that state law makes it optional for most local governments to provide compensation or expense reimbursement to elected officials. Thus, the requirements of Chapter 700 are not a state-reimbursable mandate for *most* local governments. However, state law makes payment of compensation and/or expense reimbursement compulsory for a small number of local governments—specifically, general law counties and certain special districts, such as harbor districts. For these select local governments, the CSM found that the above-described requirements of Chapter 700 constitute a state-reimbursable mandate. Initial claims for reimbursement under this mandate have not yet been collected and reviewed. Therefore, the costs associated with implementing this mandate are unknown.



## **Governor's Proposal**

The Governor's budget proposes to suspend the Chapter 700 mandate in 2013-14. State law (Government Code 17581) is not clear regarding local agency requirements when the state suspends a provision that constitutes a mandate for only some local agencies. However, one possible interpretation of state law is that suspending the Chapter 700 mandate would make its provisions optional for all local governments, not only those local governments for which it has been found to be a reimbursable mandate. As the CSM has yet to issue a statewide cost estimate, the annual state cost of funding the Chapter 700 mandate is uncertain.

## **Recommendation**

In our view, there is no obvious reason that a small number of local governments should be required to pay compensation or expense reimbursement to elected officials while this policy is optional for all other local governments. In addition, it is not clear that the state—as opposed to local governments—should pay for the development of local government policies intended to improve accountability to local residents. Therefore, we recommend the Legislature eliminate all future costs related to this mandate by modifying state law to make payment of compensation or expense reimbursement optional for all local governments. By doing so, the Legislature would standardize state policy on local elected official compensation and maintain the requirements of Chapter 700 for all local governments without incurring any future mandate reimbursement costs.

Alternatively, if the Legislature wishes to maintain the requirement that certain local governments pay compensation or expense reimbursement to elected officials, we recommend that the Legislature modify Chapter 700 to explicitly exclude them from its requirements. While this would reduce the statewide scope of Chapter 700's provisions, it would be preferable to an annual suspension of Chapter 700 because it would (1) clarify that the measure's requirements apply to most local governments and (2) avoid having the state pay for costs more appropriately born by local governments.

## **TUBERCULOSIS CONTROL**

### **Background**

*Tuberculosis (TB)*. Tuberculosis is a contagious bacterial disease that is spread through airborne particles. An individual with active TB can spread the disease to others through coughing, sneezing, or talking around others. Individuals may also be infected with "latent" TB, which does not exhibit any symptoms, but if left untreated can develop into active TB disease. In 2011, there were 2,325 reported cases of TB in the state. In recent years, between 8 percent and 10 percent of individuals infected with TB have died from TB in the state.

*TB Control*. The Department of Public Health (DPH) is the lead state agency for TB control and prevention activities, and the department performs various administrative and support activities for TB control. However, the primary responsibility

for TB control resides with local health officers (LHOs). Each county and city is required to designate an LHO to perform a variety of public health responsibilities (including TB control). However, most cities, with the exception of the cities of Berkeley, Long Beach, and Pasadena, have conferred this authority upon their county LHO. The LHOs have broad statutory authority to protect the public from the spread of TB, and can issue civil detention orders for individuals known or suspected to have TB to be detained in a health facility for examination or treatment. The LHOs can also issue civil orders excluding individuals with infectious TB from attending public places or requiring individuals to isolate themselves in their residence. The law requires that counsel be provided, upon request, for individuals who are subject to a civil detention order.

***Local Detention and Health Facility Discharge of TB Inmates/Patients.*** When a local inmate with TB is released or transferred from a “local detention facility” (local jails) to another jurisdiction, the transferring local detention facility is required to provide notification and a written treatment plan to the LHO in the receiving jurisdiction. When transferring inmates with TB, local detention facilities are also required to provide notification and a written treatment plan to the medical officer of the receiving local detention facility. In addition, health facilities must submit for approval a written treatment plan to the LHO prior to discharging a patient with TB. An LHO must review treatment plans submitted to them by health facilities within 24 hours.

***State Provides TB Control Funding to LHOs.*** The DPH provides approximately \$6.7 million (General Fund) annually to LHOs for TB control through a funding formula that is based on the number of TB cases in each jurisdiction. The DPH provides this funding based upon three ranking priorities of activities: (1) identifying and treating individuals with TB; (2) identifying individuals who have had contact with TB patients, and providing appropriate treatment; and (3) targeted testing of high-risk populations to detect individuals with latent TB. In addition to the state funding, DPH also passes through federal funding to the LHOs for TB control (approximately \$4 million annually). Additionally, three counties (Los Angeles, San Diego, and San Francisco) receive their federal funding for TB control directly from the federal government (a total of \$7.7 million in 2012-13).

***CSM Finds Several Provisions of TB Control Laws Are State Mandates.*** On October 27, 2011, the CSM determined that the following provisions of TB control laws (see Figure 2 below for full list of statutes) constituted state-reimbursable mandates.

- ***For LHOs...*** (1) Reviewing treatment plans submitted by health facilities within 24 hours of receipt and (2) notifying the medical officer of a state parole region when there are reasonable grounds to believe that a parolee with TB has ceased TB treatment.
- ***For Local Detention Facilities...*** (1) Notifying and submitting a written treatment plan to LHOs when an inmate with TB is discharged and (2) notifying the LHO and medical officer of the local detention facility when a person with TB is transferred to a facility in another jurisdiction.

- ***For Counties and Cities With Designated LHOs...*** Providing counsel to non-indigent TB patients, who are subject to a civil detention order, for purposes of representing the TB patients in court hearings reviewing civil detention orders.

<p><b>Figure 2</b></p> <p><b>List of Statutes Related to TB Control Mandate</b></p>
<p>Chapter 676, Statutes of 1993 (AB 803, Gotch)</p> <p>Chapter 685, Statutes of 1994 (AB 804, Gotch)</p> <p>Chapter 116, Statutes of 1997 (SB 362, Maddy)</p> <p>Chapter 294, Statutes of 1997 (SB 391, Solis)</p> <p>Chapter 763, Statutes of 2002 (SB 843, Perata)</p> <p>TB = Tuberculosis.</p>

***CSM Adopted Parameters and Guidelines.*** The CSM adopted the parameters and guidelines for the TB control mandate on December 7, 2012. The next stage in the mandates process for the TB control mandate is the preparation of the statewide cost estimate, which will provide an estimate of the total backlog of costs related to the mandate (the reimbursement period for the TB control mandate goes back to fiscal year 2002-03).

### **Governor’s Proposal**

The Governor’s budget proposes to suspend the TB control mandate in 2013-14. Suspending this mandate would make local compliance with the provisions of the statutes related to the TB control mandate (see Figure 2 above) optional in 2013-14. As discussed below, there is no statewide cost estimate for this mandate at this time, and the Governor’s proposal would not result in any budgetary savings in 2013-14.

### **Analysis**

***Mandated Activities Likely Reduce TB Infection Rates.*** The activities required by the TB control mandate likely reduce the spread of TB through a standardized system of treatment plan review by LHOs, although the extent of such reduction is unclear. The LHOs likely have more experience with TB cases than a typical medical professional, particularly as TB has become less common. The complexity of TB cases also varies, and certain cases (such as multidrug-resistant TB) may require more assistance from LHOs than others. The LHO review and approval of TB treatment plans appears to be a reasonable way to ensure that TB patients are on an appropriate treatment plan prior to being discharged from medical facilities and potentially exposing the public to active TB. Similarly, the notification requirements under the TB control mandate for local detention facilities appears to be a reasonable method to prevent the spread of TB within and outside of local detention facilities.

***Increased TB Infection Rates Could Increase Public and Private Health Care Costs.*** To the extent that suspending the TB control mandate resulted in increased rates of TB infection, there would be unknown, but potentially significant public and private health care costs related to an increase in annual TB cases. Therefore, any savings realized from suspending the TB control mandate would be offset by any increase in TB-related health care costs that resulted from the mandate suspension.

***Suspending LHO Review of Treatment Plans Raises Issues Given Other Statutory Requirements Placed on Health Facilities.*** Health facilities are required to submit treatment plans to LHOs and obtain approval prior to releasing TB patients. If the TB control mandate were suspended, and LHOs chose to no longer review treatment plans submitted by health facilities, health facilities would never receive approval to release TB patients. Under this scenario, health facilities would be unable to comply with the existing statutory requirement to obtain approval prior to discharging TB patients. In order to ensure that statute is internally consistent, any decisions by the Legislature to make changes to the requirement of LHOs to review treatment plans submitted by health facilities should also take into account the statutory requirements of health facilities.

***No Near-Term State Savings From Suspending Mandate.*** The TB control mandate is in the final phase of the mandate determination process: development of the statewide cost estimate. At this stage, the Constitution does not require the Legislature to provide funding for a mandate in the annual budget. Based on the usual timeline for commission mandate determinations, we expect that the constitutional funding requirement for this mandate will become applicable in the 2014-15 fiscal year. Thus, the Governor's proposal to suspend the TB control mandate in 2013-14 would not affect the state's 2013-14 budget. Suspending the mandate, however, would reduce the total bill for this mandate that will ultimately be presented to the Legislature (likely not until 2014-15) because local governments would not be eligible for reimbursement for activities carried out in 2013-14.

***Lack of Cost Information Complicates Decision.*** Since there is no statewide cost estimate for the TB control mandate, data are lacking to fully evaluate the benefits of the mandated activities against their costs (for both the backlog and ongoing annual costs). However, given that there are a relatively small number of TB cases in the state on an annual basis (approximately 2,300 cases), it seems reasonable that the annual costs of this mandate could be on the order of magnitude of a few million dollars.

## **Recommendations**

***Reject the Governor's Proposal.*** Given the lack of cost information available against which to weigh the benefits of the TB control mandate, and the fact that the constitutional requirement to fund or suspend/repeal the mandate will not be triggered until 2014-15 (at the earliest), we believe that it is premature to suspend the TB control mandate at this time. We therefore recommend the Legislature reject the Governor's proposal to suspend the TB control mandate in 2013-14. The statewide cost estimate will likely be available within the next year (as well as potentially better data on the benefits of the mandated activities), and this will give the Legislature more information

from which to weigh the costs and benefits of the TB control mandate and make a more informed decision. As discussed above, rejecting the Governor’s proposal would have no fiscal effect in 2013-14, but would add an unknown amount—associated with local government costs of carrying out the TB control mandate in 2013-14—to the total reimbursement for prior-year costs that the state must provide in the future.

***Consider Modifying Existing TB Control Funding to Address Mandate Costs.***

Although the Legislature is not bound by constitutional funding requirements for the TB control mandate in 2013-14, the Legislature will likely be required to fund, suspend, or repeal the TB control mandate in 2014-15. Given the potential drawbacks of suspending or repealing the TB control mandate, we recommend the Legislature carefully consider alternatives to suspension or repeal that maintain some or all of the mandate’s requirements in future years. In general, we see two such alternatives: (1) funding the mandate through the traditional mandate reimbursement process and (2) modifying the existing state funding stream for TB control as a solution outside the mandate reimbursement process. The traditional mandate reimbursement process has several drawbacks, including lack of incentives for cost-effectiveness, significant variation in reimbursement across local governments, and limited accountability for local governments receiving reimbursement. For this reason, we think modifying the existing state funding stream for TB control is a superior means of avoiding the policy drawbacks of suspension or repeal. In preparation for the 2014-15 budget, we recommend the Legislature direct the administration to work with affected local governments to examine how the existing funding stream could be repurposed to fund the mandated activities. Some potential options include: (1) requiring the existing funds to be used first to offset mandate costs, (2) making receipt of state funding conditional upon carrying out the mandate requirements, or (3) augmenting the existing state funding stream.



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