



The 2015-16 Budget:

Paying for a State Mandate on Local Child Protective Agencies

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Summary

In 1980, the Legislature enacted the Child Abuse and Neglect Reporting Act which requires certain professionals to report child abuse and neglect to local law enforcement agencies or county welfare or probation departments. The local agencies, in turn, are required to forward information to the Department of Justice (DOJ) for entry into a central statewide reporting system.

In December 2007, the Commission on State Mandates (CSM) found that several provisions of the act—collectively known as the Interagency Child Abuse and Neglect Investigation Reports (ICAN) mandate—impose a reimbursable state mandate on local governments. More recently, in September 2014, the CSM approved a statewide estimate of reimbursable costs for the ICAN mandate totaling \$90.4 million. This action triggers the Legislature’s constitutional obligation to fund, repeal, or suspend the mandate.

The Governor’s budget proposes to suspend the mandate, rendering its provisions optional for local governments in 2015-16. Suspending the mandate also allows the state to defer payment of \$90.4 million in prior-year claims. The Governor’s budget proposes a \$4 million grant program to fund ICAN activities carried out by county welfare and probation departments in counties that choose to participate.

The Governor’s proposal provides a reasonable starting point for the Legislature, but has three major limitations. First, as some counties may not participate in the grant program, compliance of child protective agencies with ICAN could vary significantly. Second, the grant program does not fund local law enforcement agencies’ activities. As a result, these agencies’ compliance with ICAN could be uneven. Finally, the Governor does not propose a plan for paying the mandate’s prior-year claims, meaning the state’s growing debt to local government for post-2004 mandate claims would increase.

To address these limitations, we recommend the Legislature (1) adopt the Governor’s proposal but consider augmenting the grant program’s funding to increase the likelihood of county participation, (2) require local law enforcement agencies to carry out ICAN activities as a condition of receiving certain state allocations, and (3) develop a plan to retire the post-2004 mandate backlog, including ICAN claims.

Introduction

In September 2014, the CSM approved a statewide cost estimate for a wide-ranging state mandate related to child welfare—ICAN. This action triggers the Legislature’s constitutional requirement to fully fund the mandate in 2015-16 or suspend or repeal it. The Governor’s budget proposes to suspend the ICAN mandate but fund some of the mandate’s requirements through a new grant program, in which county participation would be optional. In this report we (1) provide background on the ICAN mandate and the mandate reimbursement process, (2) describe and evaluate the Governor’s plan to address this mandate, and (3) make recommendations for the Legislature.

Background

Child Abuse Reporting

The Child Abuse and Neglect Reporting Act (the act) requires individuals in certain professions (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 act further requires local law enforcement and county welfare and probation agencies (hereafter referred to collectively as “child protective agencies”) to forward certain reports of child abuse and neglect to the DOJ for entry into the state’s central child abuse and neglect reporting system, the Child Abuse Central Index (CACI). Since its enactment in 1980, the act has been amended several times to include additional mandated reporters and specify additional reporting and investigative requirements of child protective agencies.

Several Provisions of the Act Are State Reimbursable Mandates. In December 2007, the CSM found that several provisions of the act and subsequent amendments (see Figure 1 for a full list

of chaptered legislation)—collectively known as the ICAN mandate—impose a state mandate on local governments by requiring them to:

- Distribute the report form to mandated reporters and forward reports to the appropriate agency when the agency lacks jurisdiction.
- Refer, or “cross-report,” all reports of child abuse and neglect to other child protective agencies.
- Investigate child abuse and neglect reports to determine if they are substantiated or inconclusive and, therefore, should be submitted to DOJ for entry in CACI, as well as inform mandated reporters of the results of a completed investigation.
- Notify suspected child abusers when they are reported to CACI, hold due process hearings for individuals listed on CACI, and maintain records for reports made to CACI.

Additionally, the CSM found to be a state reimbursable mandate the act’s requirements that local government users of CACI (1) obtain original investigative reports and make an independent evaluation of their quality and sufficiency and (2) notify relative caretakers that they are listed in CACI when evaluating the placement of children with relatives.

Subsequent Legislation Reduced Scope of Mandate. 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. Because many of the ICAN-mandated activities relate 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 also 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).

CSM Adopts Statewide Cost Estimate. In September 2014, the CSM approved an estimate of prior year state reimbursement costs related to ICAN totaling \$90.4 million. This estimate reflects local government costs for the period 1999-00 to 2012-13. 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 continue the mandate, it must appropriate funds in the budget bill to pay the full amount reflected in the statewide cost estimate, which consists of costs incurred by local governments in all prior years. Conversely, if the Legislature repeals or suspends the mandate, the state, while still liable for these local government costs, may defer their payment 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.

Mandate Reimbursement Process

Funding Mandates Through Claims Process Typically Is Messy. Reimbursing local governments for state mandates using the traditional claims process often is messy, administratively burdensome, and expensive. Claims can vary considerably across local governments, sometimes

for inexplicable reasons or in ways that can work at cross-purposes with the intent of the mandate legislation. Local governments also have reduced incentive to be efficient or cost-effective because reimbursements are paid without regard to how efficiently local governments carry out the activities. The traditional claims process also

Figure 1

List of Statutes Related to ICAN Mandate

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

^a This statute was not originally part of the test claim, although it was considered by the Commission on State Mandate staff in the March 12, 2013 draft proposed parameters and guidelines.
 ICAN = Interagency Child Abuse and Neglect Investigation Reports.

fails to provide timely reimbursement to local governments, as claims typically are paid at least two years after being submitted.

State Owes Local Governments for Past Mandate Claims. The state owes counties, cities, and special districts about \$1.9 billion for unpaid mandate claims. This debt consists of approximately:

- \$800 million for claims submitted prior to 2004. State law requires these claims to be paid by 2020-21. The *2014-15 Budget Act* includes language which could result in some or most of these claims being paid in 2014-15.
- \$1.1 billion for claims submitted in or after 2004. Almost all of these claims are for mandates that the state has suspended, repealed, or substantially revised. State law does not specify a payment plan for these obligations.

Statewide Sales Tax for Local Public Safety

Voters Approved Proposition 172. In 1992-93 and 1993-94, in response to serious budgetary shortfalls, the state permanently redirected almost one-fifth of total statewide property tax revenue from cities, counties, and special districts to K-12 and community college districts. Increased property tax revenues to K-12 and community college districts, in turn, reduced the state's funding obligations for K-14 education. These transactions are known as the Educational Revenue Augmentation Fund (ERAF) shifts. Recognizing the impact of the ERAF shifts on cities and counties, in 1993 the Legislature proposed and voters approved Proposition 172. This measure established a statewide half-cent sales tax for city and county public safety services. In 2013-14, the Proposition 172 half-cent sales tax raised about \$3 billion.

Allocation of Proposition 172 Revenue. The Legislature determines how Proposition 172 funds are allocated. State law provides that (1) counties receive about 95 percent of Proposition 172 revenues (about \$2.9 billion) and (2) cities experiencing ongoing property tax reductions associated with the 1993-94 ERAF shift receive the rest (about \$150 million). This allocation system reflects in part the significant variation in the amount of property tax revenue shifted from cities and counties in 1993. About a quarter of cities do not receive Proposition 172 funds. Most of these cities were incorporated after 1978 and do not operate a police or fire department.

Governor's Proposal

Budget Proposes to Suspend ICAN. The Governor's budget proposes to suspend the ICAN mandate in 2015-16. Suspending the ICAN mandate:

- Allows each local government to decide, for 2015-16, whether to comply with its provisions.
- Stops the growth in state liabilities for the mandate. If a local agency decides to implement the ICAN mandate in 2015-16, the agency would not be eligible for state reimbursement for these costs.
- Allows the state to defer to a later date reimbursement for prior-year local government costs for this mandate—\$90.4 million. If the Legislature decides to reactivate this mandate in the future, however, it must pay these claims in full at that time.

Budget Proposes Grant Program for Some Provisions of ICAN. Somewhat offsetting the effects of suspension on the level of compliance with ICAN provisions, the Governor proposes to

create a grant program to fund ICAN activities carried out by county welfare and probation departments in counties that choose to participate in the program. The grant program would be administered by the Department of Social Services. The Governor's budget allocates \$4 million for this grant program in 2015-16. Counties accepting funding under this grant program would be required to carry out the ICAN-mandated activities specific to county welfare and probation departments but would not be eligible to file mandate reimbursement claims for their 2015-16 costs. The budget does not propose a similar grant program to fund ICAN activities carried out by city and county law enforcement agencies.

Analysis

Suspension of ICAN Mandate Presents Several Concerns. The child abuse and neglect reporting required under the ICAN mandate represents a key 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, it is possible that suspension of the ICAN mandate could:

- ***Reduce Communication Amongst Child Protective Agencies.*** Cross-reporting of child abuse and neglect between local law enforcement and child welfare agencies is essential to the mission of child protective agencies and, therefore, a critical component of the state's child welfare system. In some cases, however, barriers exist to effective information sharing among local child protective agencies. Larger counties may have ten or more city police departments in addition to county sheriff, probation, and child welfare agencies. Effective information sharing across this many agencies can be challenging. Nonetheless, the ICAN mandate makes cross-reporting compulsory, compelling agencies to find ways to overcome these barriers. If the ICAN mandate is suspended, some agencies—especially those facing more significant barriers to information sharing—might elect to not cross-report in some cases. This could reduce the number of child abuse and neglect reports received, and could lead to undetected child abuse and neglect.
- ***Weaken System of Child Abuse and Neglect Reporting by Mandated Reporters.*** 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) make 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 might not be filed.
- ***Reduce the Effectiveness of CACI.*** In suspending the requirement that county child welfare and probation departments 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 child welfare and probation departments 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.***
Ssuspending the ICAN mandate could 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.

Funding Mandate Only Way to Require That ICAN Activities Continue. The issues that might arise if some local agencies decide not to carry out ICAN activities are worrisome. The Legislature, however, will want to weigh the benefits of continuing this mandate against its costs. To continue to require that *all* local agencies carry out ICAN activities, the Legislature would need to (1) include \$90.4 million in the 2015-16 budget to pay prior-year ICAN mandate claims and (2) provide funding in every subsequent year's budget to reimburse local agencies for their ongoing mandate costs—probably at least several million dollars per year (based on the information available). In addition, all state funding for this program would be funneled through the state's troublesome mandate claims process.

Governor's Proposed Grant Program Merits Consideration . . . In light of the costs of requiring statewide uniformity in compliance with the ICAN mandate, the Legislature may wish to consider alternatives that would reduce these costs but likely

achieve similar results. The Governor's proposal to suspend the mandate and fund some activities through a grant program provides a reasonable starting point for such an alternative. Welfare and probation departments in counties that participate in the Governor's grant program would continue to carry out (1) CACI reporting, (2) various activities necessary to provide due process rights to individuals reported to CACI, and (3) cross-reporting. To the extent that most or all counties participate, many of the drawbacks of suspending the ICAN mandate discussed above would be avoided. In addition, the grant program would be a simpler way of funding these activities than the troublesome traditional claims process.

. . . But Has Some Limitations. The Governor's proposal, however, has three major limitations. First, though cost information is limited, some counties might consider the grant amounts to be less than their ICAN mandate costs. As shown in Figure 2, six counties—accounting for about 15 percent of the state's population—claim that their combined ICAN mandate costs are more than half of the \$4 million proposed for the grant program. Moreover, the amount each county claims varies widely, from less than \$10 per thousand residents (Placer and Santa Barbara Counties) to more than \$800 per thousand residents (Riverside County). If a county views its potential grant amount as too low, it might decline to participate in the grant program, making all ICAN activities optional for child protective agencies in the county. Consequently, the level of compliance with ICAN provisions could vary significantly county by county. Second, the proposed grant program does not provide any resources to local law enforcement agencies to offset their ICAN mandate costs. As a result, local law enforcement agency cross-reporting of child abuse cases and carrying out of specified activities to assist mandated reporters would be voluntary throughout the state. As such,

local law enforcement agency compliance with ICAN provisions could be uneven, potentially falling to levels that reduce the effectiveness of the child welfare system. Third, the Governor’s proposal adds \$90 million to the state’s growing debt to local governments for post-2004 mandates. The administration does not specify a plan to retire this debt.

Increasing Grant Funding Could Increase County Participation. Augmenting the amount of funding allocated by the Governor’s grant program may make counties more likely to participate. Because there is significant variation in the existing information about county ICAN mandate costs, it is difficult to determine what level of funding counties would view as adequate. Therefore, if the Legislature wishes to adopt the grant program, it may find it beneficial to work with counties in selecting a funding level.

Linking Law Enforcement Funding to ICAN Implementation Could Increase Compliance. A well-functioning child welfare system is integral to the basic mission of local law enforcement agencies: to preserve the safety of the public. ICAN mandate activities, therefore, can be considered best practices for local law enforcement agencies. In light of this, it would be reasonable for the Legislature to consider reducing or withholding allocations of resources to local law enforcement agencies that do not follow these best practices. In particular, the Legislature could require that, as a condition of receiving Proposition 172 funds, cities and counties ensure that their law enforcement agencies carry out ICAN mandate activities. As the vast majority of city and county law enforcement

Figure 2
Six Counties’ Claims Total Over \$2 Million

County	Claimed Annual Costs ^a	Claimed Annual Costs Per 1,000 Residents
Kern	\$205,062	\$235
Napa	10,126	73
Placer	2,427	7
Riverside	1,894,084	831
Santa Barbara	4,087	9
Santa Clara	41,389	22
All Counties Submitting Claims	\$2,157,175	\$362

^a Based on average of most recent three years of claims.

agencies receive Proposition 172 funding, this arrangement likely would ensure that ICAN mandate activities continue in most parts of the state. While ICAN activities would remain optional for a few city law enforcement agencies that do not receive Proposition 172 funds, this approach would significantly reduce the risks associated with the Governor’s proposal.

Developing a Payment Plan Would Be a Good First Step Towards Addressing Mandate Backlog. As mentioned above, the state currently owes cities, counties, and special districts over \$1 billion for prior-year mandate claims submitted in or after 2004. If the Legislature suspends the ICAN mandate, this sum would grow by \$90 million. The state currently has no plan for paying these obligations. While Proposition 2—a constitutional amendment approved by voters in November 2014—sets aside funds to pay down many of the state’s liabilities, including pre-2004 mandate claims, it does not allow these funds to be used to pay claims submitted in or after 2004. Mindful of this growing debt to local governments, the Legislature should work with the administration to develop a multiyear payment plan for post-2004 mandates. To provide flexibility to pay the ICAN mandate backlog over a number of years, the Legislature would need to suspend this mandate.

Recommendations

Maintaining statewide uniformity of ICAN activities by continuing the mandate would yield important benefits, but likely would be costly: \$90 million in 2015-16 and potentially several million dollars annually thereafter. Recognizing these trade-offs, we recommend the Legislature adopt a package of actions that would (1) create incentives for local governments to carry out ICAN activities, (2) fund ICAN activities in a more straightforward and cost-effective manner, and (3) avoid administrative burdens related to the traditional mandate claims process. Specifically, we recommend the Legislature:

Adopt Governor’s Proposal to Suspend Mandate and Create Grant Program. We recommend the Legislature adopt the Governor’s proposal to suspend the ICAN mandate and create a grant program that would be optional for counties. We further recommend the Legislature work with counties to determine the funding level that would be sufficient to encourage full county participation. Finally, we recommend that the Legislature review the grant program within

three years. To the extent that this program has achieved its intended purpose, we recommend the Legislature modify statutes to clarify the status of the ICAN mandate—that is, incorporate ICAN requirements into the Governor’s grant program and the Proposition 172 allocation statutes and eliminate them as a separate state mandate.

Add Conditions to Receipt of Proposition 172 Funds. We recommend that the Legislature require city and county law enforcements agencies to carry out ICAN activities as a condition of receiving Proposition 172 funds. Any Proposition 172 funds currently allocated to cities and counties that do not wish to continue ICAN activities could be redistributed to the remaining cities and counties.

Develop Long-Term Plan to Retire Mandate Backlog. We suggest the Legislature work with the administration to develop a plan to pay off the post-2004 mandate backlog, including ICAN claims. For example, the state’s existing statutory payment plan for pre-2004 mandate claims provides for repaying this debt over a period of 15 years. Repaying the post-2004 mandate backlog over 15 years would require annual payments of around \$80 million.

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