

**ITEM 8**  
**FINAL STAFF ANALYSIS**  
**PROPOSED PARAMETERS AND GUIDELINES**

Penal Code Section 14250

Statutes 2000, Chapter 822

Statutes 2001, Chapter 467

*DNA Database (00-TC-27)*

And Amendment To

*Postmortem Examinations: Unidentified Bodies (02-TC-39)*

County of San Bernardino and County of Los Angeles, Claimants

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**EXECUTIVE SUMMARY**

**Summary of the Mandate**

On September 30, 2004, the Commission adopted its Statement of Decision that Penal Code section 14250 constitutes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities:

- For coroners to collect samples for DNA testing from the remains of unidentified persons and send the samples to [the Department of Justice (DOJ)] in accordance with the DOJ-developed standards and guidelines [see DOJ Information Bulletins 01-BFS-04 and 02-BFS-03] for preservation and storage of DNA samples (Pen. Code, § 14250, subs. (b) & (c)(1)). This does not include storing DNA samples from remains of unidentified deceased persons either before sending to DOJ or upon return. It does include exhumation in circumstances where it is the only alternative available to meet the reporting needs under the test claim statute.
- For local law enforcement to: (1) inform parents or other appropriate relatives of those missing under high-risk circumstances (as defined) that they may give a voluntary sample of DNA within 30 days after making a report, and (2) take a DNA sample in a manner prescribed by DOJ, including using a model kit (Pen. Code, § 14250, subs. (c)(2) & (c)(4)).
- For local law enforcement to: (1) reverify the status of a missing person before submitting a DNA sample to DOJ, and (2) send the DNA sample and any supplemental information to DOJ with the crime report 30 days after the filing of a report (Pen. Code, § 14250, subd. (c)(5)).

**Discussion**

Staff reviewed the claimant's proposed parameters and guidelines and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with

language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimants' proposed parameters and guidelines. A draft staff analysis was issued on December 8, 2005. On December 29, 2005, the County of San Bernardino concurred with the draft staff analysis and proposed parameters and guidelines.

## ***II. Eligible Claimants***

Staff finds that this program mandates specific activities only upon coroners and local law enforcement agencies. School districts and community college districts are not required by state law to employ law enforcement personnel. Therefore, they are not eligible claimants. Staff made the modification accordingly.

## ***III. Period of Reimbursement***

Staff clarified that costs incurred in compliance with Statutes 2000, chapter 822 on or after January 1, 2001, are eligible for reimbursement.

## ***IV. Reimbursable Activities***

Staff outlines the following issues:

### Policies and Procedures

Staff notes that DOJ's information bulletins provide standards and guidelines for the collection, storage, and submission of DNA samples. However, staff finds that developing *internal* policies and procedures to implement the activities listed in the Reimbursable Activities section of the parameters and guidelines is reasonably necessary to carry out the mandate. Therefore, staff included this as a one-time activity for both coroners and law enforcement agencies.

### Training

Staff finds that one-time training per employee is reasonably necessary to carry out the requirements of the mandate. As noted above, DOJ issues information bulletins detailing its requirements. Thus, staff determined that there is no evidence in the record to show that ongoing refresher training is also necessary to carry out the mandate. Therefore, for coroners, staff limited training to one-time per employee for each staff person who may be required to initiate, prepare, or file some or all of the subject DOJ samples for complying with DOJ's reporting requirements.

As for law enforcement personnel, DOJ Information Bulletin 02-BFS-03 references a 20-minute Missing Persons DNA training video developed by the Commission on Peace Officer Standards and Training and the Office of the Attorney General. DOJ recommends that all law enforcement personnel collecting DNA samples view the training video before collecting DNA samples. The bulletin explains that "[t]he video, along with the steps outlined in the Missing Persons DNA Submission Form, will provide the necessary information for proper collection of samples and contamination prevention."<sup>1</sup> Staff finds that because DOJ is the expert in this program and recommends this video for proper training on the DNA collection process, law enforcement personnel should view the 20-minute video. If, however, the law enforcement agency elects to train its personnel differently, staff finds that agencies will only be reimbursed for 20 minutes per

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<sup>1</sup> Attachment B.

training session per employee. Therefore, for law enforcement personnel, staff limited training to one-time training for 20 minutes per employee.

#### Specialized Software and Databases

Staff finds that the claimants' proposed activities for obtaining, developing, or modifying specialized software and developing databases is not required or reasonably necessary to comply with the mandated program. Any materials and supplies that have been consumed or expended for the purpose of the reimbursable activities or any fixed assets and equipment that are necessary to implement the reimbursable activities may be claimed as a direct cost, which is further explained in Section V. of the parameters and guidelines. Therefore, staff deleted these proposed activities.

#### Collecting Samples for DNA Testing

The Commission found in the Statement of Decision that collecting samples for DNA testing includes costs for exhumation in circumstances where it is the only alternative available to meet the reporting needs under the test claim statute. Staff finds that pursuant to Health and Safety Code section 7054, subdivision (a)(1), reburial of the remains is reasonably necessary to comply with the law, to the extent that the person remains unidentified or there is no family to which to return the remains. Staff included this in the parameters and guidelines as a reimbursable activity for coroners.

#### Maintaining, Storing, Retaining, and Refrigerating the Evidence

Staff deleted the proposed activities to maintain, store, retain, and refrigerate evidence because the Commission denied them in the Statement of Decision.

#### Destroying the Maintained Evidence after a Positive Identification is Made

Staff finds that if a positive identification is made, the coroner notifies the family and does not have to destroy the evidence. Regarding samples from unidentified deceased persons, staff finds that the DNA evidence stays with the remains and would be reburied for preexisting cases. As noted above, reburial of the remains is reimbursable only to the extent that the person remains unidentified or there is no family to which to return the remains. Therefore, staff finds that destroying evidence is not reasonably necessary to comply with the mandate; staff deleted the activity.

#### Explaining the Standard Release Form

Staff agrees with DOF that explaining the DOJ standard release form would be explained at the time relatives agree to voluntarily provide a DNA sample. Therefore, staff deleted this proposed activity because staff finds that it is part of the activity of informing relatives that they may give a voluntary sample for DNA testing.

#### Reverifying the Status of a Missing Person and Sending the Samples to DOJ with a Copy of the Crime Report

The Commission found that reverifying the status of a missing person before submitting a DNA sample to DOJ, and sending the DNA sample and any supplemental information to DOJ with a copy of the crime report are mandated by the state. The claimants inadvertently omitted them from their proposal, and therefore, staff added them as reimbursable activities for law enforcement agencies.

***VII. Offsetting Savings and Reimbursements***

Staff proposes that any funds distributed to counties by DOJ for purposes of pathology and exhumation pursuant to Penal Code section 14251, subdivision (b), shall also be identified and deducted from claims.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified, beginning on page 13.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## STAFF ANALYSIS

### Claimants

County of San Bernardino and County of Los Angeles

### Chronology

09/30/04 Commission on State Mandates (Commission) adopted Statement of Decision  
10/18/04 Claimants submitted proposed parameters and guidelines  
11/29/04 The State Controller's Office (SCO) submitted comments  
01/27/05 The Department of Finance (DOF) submitted comments  
02/14/05 County of Los Angeles submitted rebuttal to state agency comments;  
County of San Bernardino submitted rebuttal to state agency comments  
12/08/05 Commission issued draft staff analysis  
12/29/05 County of San Bernardino submitted comments  
01/09/06 Commission issued final staff analysis

### Summary of the Mandate

On September 30, 2004, the Commission adopted its Statement of Decision that Penal Code section 14250 constitutes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities:

- For coroners to collect samples for DNA testing from the remains of unidentified persons and send the samples to [the Department of Justice (DOJ)] in accordance with the DOJ-developed standards and guidelines [see DOJ Information Bulletins 01-BFS-04 and 02-BFS-03] for preservation and storage of DNA samples (Pen. Code, § 14250, subs. (b) & (c)(1)). This does not include storing DNA samples from remains of unidentified deceased persons either before sending to DOJ or upon return. It does include exhumation in circumstances where it is the only alternative available to meet the reporting needs under the test claim statute.
- For local law enforcement to: (1) inform parents or other appropriate relatives of those missing under high-risk circumstances (as defined) that they may give a voluntary sample of DNA within 30 days after making a report, and (2) take a DNA sample in a manner prescribed by DOJ, including using a model kit (Pen. Code, § 14250, subs. (c)(2) & (c)(4)).
- For local law enforcement to: (1) reverify the status of a missing person before submitting a DNA sample to DOJ, and (2) send the DNA sample and any supplemental information to DOJ with the crime report 30 days after the filing of a report (Pen. Code, § 14250, subd. (c)(5)).

## **Discussion**

Staff reviewed the claimants' proposal and the comments received. Non-substantive, technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Substantive changes were made to the following sections of the claimants' proposed parameters and guidelines. A draft staff analysis was issued on December 8, 2005. On December 29, 2005, the County of San Bernardino concurred with the draft staff analysis and proposed parameters and guidelines.

### ***II. Eligible Claimants***

The claimants' proposal included cities, counties, school districts, and community college districts as eligible claimants for this program.

In their comments to the proposed parameters and guidelines,<sup>2</sup> the SCO and DOF recommended that school districts and community college districts not be included as eligible claimants because only cities and counties would claim costs for this program.

Staff finds that this program mandates specific activities only upon coroners and local law enforcement agencies. School districts and community college districts are not required by state law to employ law enforcement personnel. Therefore, they are not eligible claimants. Staff made the modification accordingly.

### ***III. Period of Reimbursement***

The claimant proposed separate reimbursement periods for law enforcement activities and coroners' activities. However, Penal Code section 14250, as added by Statutes 2000, chapter 822 mandated specific activities upon both coroners and law enforcement agencies. Statutes 2001, chapter 467 only clarified Penal Code section 14250 and did not require additional activities. Therefore, staff clarified that costs incurred in compliance with Statutes 2000, chapter 822 on or after January 1, 2001, are eligible for reimbursement.

### ***IV. Reimbursable Activities***

The claimants' proposed parameters and guidelines include the following ongoing activities as eligible for reimbursement:

For Coroners:

1. collecting samples for DNA testing from the remains of all unidentified persons, including all costs associated with the exhumation and reburial of the remains for preexisting cases;
2. sending those samples to DOJ for DNA testing and inclusion in the DNA data bank;
3. maintaining the evidence (DNA samples) returned to DOJ;
4. storing, retaining, and refrigerating the evidence (DNA sample);

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<sup>2</sup> Exhibit C, Exhibit D.

5. destroying the maintained evidence (DNA sample) after a positive identification is made and a report is issued by DOJ; and
6. training employees on an ongoing basis to assure compliance with this section.

For Law Enforcement:

1. informing the parents or other appropriate relatives that they may give a voluntary sample for DNA testing or may collect a DNA sample from a personal article belonging to the missing person if available;
2. taking DNA samples in a manner proscribed by the department of justice, including reimbursement for model DNA sample kits (Pen. Code Sec. 14250, subds. (c)(2) & (C)(4);
3. explaining the standard release form developed by the DOJ to the public;
4. developing data bases to track the time requirements mandated under this section; and
5. training employees on an ongoing basis to assure compliance with this section.

In addition, the claimants proposed the following one-time activities:

1. coroners to develop policies and procedures for collecting samples for DNA testing from the remains of unidentified persons and send the samples to DOJ in accordance with the DOJ-developed standards and guidelines for preservation and storage of DNA samples (Pen. Code Sec. 14250, subds. (b) & (c)(1));
2. local law enforcement to develop policies and procedures to: (1) inform parents or other appropriate relatives of those missing under high-risk circumstances (as defined by Penal Code Sec. 14213) that they may give a voluntary sample of DNA within 30 days after making a report, and (2) take a DNA sample in a manner prescribed by DOJ, including using a model kit (Pen. Code Sec. 14250, subds. (c)(2) & (c)(4);
3. train each staff person who may be required to initiate, prepare, or file some or all of the subject DOJ samples for complying with DOJ's reporting requirements; and
4. obtain, develop or modify specialized software for collecting the subject DOJ samples in a timely and economical manner. If the specialized software is used for other purposes, only the pro rata costs of the software, including licensing agreement, that is *related* to reimbursable activities specified herein, may be claimed under Materials and Supplies and/or Contracted Services.

In its comments dated November 19, 2004, the SCO recommended several technical changes to conform the reimbursable activities to the Statement of Decision. DOF also recommended several technical changes in its comments dated January 27, 2005. On February 14, 2005, the County of San Bernardino responded to the comments and agreed with the technical changes. Staff made the modifications accordingly.

Staff outlines the following issues:

## Policies and Procedures

Regarding the proposed one-time activities to develop policies and procedures, DOF noted that DOJ issued Information Bulletin 01-BFS-04 for coroners and Information Bulletin 02-BFS-03 for law enforcement agencies to provide standards and guidelines for the collection, storage, and submission of DNA samples. Thus, DOF recommended that the parameters and guidelines specifically state how policies and procedures developed by coroners and law enforcement agencies will differentiate or expand on the DOJ guidelines.

The County of San Bernardino contended that policies and procedures are necessary at the agency level because the DOJ bulletins do not address certain procedures, such as internal responsibility for testing and submission.

Staff notes that DOJ's information bulletins provide standards and guidelines for the collection, storage, and submission of DNA samples. However, staff finds that developing *internal* policies and procedures to implement the activities listed in the Reimbursable Activities section of the parameters and guidelines is reasonably necessary to carry out the mandate. Therefore, staff included this as a one-time activity for both coroners and law enforcement agencies.

## Training

The SCO disagrees that training should be included as an ongoing activity. On the other hand, DOF supported initial one-time training to ensure that coroners, medical examiners, and local law enforcement personnel are aware of and follow DOJ's written procedures, and also supports ongoing, refresher training for coroners and law enforcement personnel, scheduled at reasonable intervals.

On February 14, 2005, the County of Los Angeles submitted a declaration by David Campbell, Captain of the Los Angeles County Department of Coroner's Operations Bureau, Forensic Services Division. Mr. Campbell declared that ongoing training, scheduled at reasonable intervals, as suggested by DOF, is reasonably necessary to ensure compliance with DOJ's requirements. The County of San Bernardino also agreed with DOF's suggestion for initial and ongoing refresher training for coroners and law enforcement personnel.

Staff finds that one-time training per employee is reasonably necessary to carry out the requirements of the mandate. As noted above, DOJ issues information bulletins detailing its requirements. Thus, staff determined that there is no evidence in the record to show that ongoing refresher training is also necessary to carry out the mandate. Therefore, for coroners, staff limited training to one-time per employee for each staff person who may be required to initiate, prepare, or file some or all of the subject DOJ samples for complying with DOJ's reporting requirements.

As for law enforcement personnel, DOJ Information Bulletin 02-BFS-03 references a 20-minute Missing Persons DNA training video developed by the Commission on Peace Officer Standards and Training and the Office of the Attorney General. DOJ recommends that all law enforcement personnel collecting DNA samples view the training video before collecting DNA samples. The bulletin explains that "[t]he video, along with the steps outlined in the Missing Persons DNA Submission Form, will provide the necessary information for proper collection of samples and contamination prevention."<sup>3</sup> Staff finds that because DOJ is the expert in this program and

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<sup>3</sup> Attachment B.



recommends this video for proper training on the DNA collection process, law enforcement personnel should view the 20-minute video. If, however, the law enforcement agency elects to train its personnel differently, staff finds that agencies will only be reimbursed for 20 minutes per training session per employee. Therefore, for law enforcement personnel, staff limited training to one-time training for 20 minutes per employee.

#### Specialized Software and Databases

Regarding the claimants' proposed activity for law enforcement agencies to develop databases to track the mandated time requirements, the SCO contends that it should be part of the one-time activity of developing policies and procedures. DOF is unclear that the volume of collections would substantiate the need for local jurisdictions to develop new databases.

Similarly, with regard to the proposed one-time activity to obtain, develop, or modify specialized software for collecting the subject DNA samples, DOF is unclear that the volume of collections would substantiate the need for local jurisdictions to obtain and develop specialized software. DOF notes that DOJ maintains the statewide DNA database. If modifications to existing software are necessary, DOF recommends that the parameters and guidelines state what are considered reasonable modifications. The County of San Bernardino asserts that each agency has different systems in place, and thus, specifying "reasonable modifications" is not practical. The County maintains that only pro-rata costs would be claimed.

Staff finds that the claimants' proposed activities for obtaining, developing, or modifying specialized software and developing databases is not required or reasonably necessary to comply with the mandated program. Any materials and supplies that have been consumed or expended for the purpose of the reimbursable activities or any fixed assets and equipment that are necessary to implement the reimbursable activities may be claimed as a direct cost, which is further explained in Section V. of the parameters and guidelines. Therefore, staff deleted these proposed activities.

#### Collecting Samples for DNA Testing

The Commission found in the Statement of Decision that collecting samples for DNA testing includes costs for exhumation in circumstances where it is the only alternative available to meet the reporting needs under the test claim statute. The claimants' proposed parameters and guidelines also include costs for reburial of the remains for preexisting cases. Health and Safety Code section 7054, subdivision (a)(1), states that every person who deposits or disposes of any human remains in any place, except in a cemetery, is guilty of a misdemeanor. Therefore, staff finds that pursuant to Health and Safety Code section 7054, subdivision (a)(1), reburial of the remains is reasonably necessary to comply with the law, to the extent that the person remains unidentified or there is no family to which to return the remains. Staff included this in the parameters and guidelines as a reimbursable activity for coroners.

#### Maintaining, Storing, Retaining, and Refrigerating the Evidence

The SCO and DOF recommended deletion of the proposed activities for maintaining and storing DNA samples. The SCO argues that these activities are not mandated by the state. DOF argues that these activities were specifically excluded in the Statement of Decision.

In his declaration, David Campbell, Captain of the Los Angeles County Department of Coroner's Operations Bureau, Forensic Services Division, declared that storing, retaining, and refrigerating

DNA samples is reasonably necessary to ensure that the samples are appropriately preserved before being sent to DOJ for testing.

The Commission's Statement of Decision specifically states:

The Commission finds that storing DNA samples from unidentified human remains is not mandated by the test claim statute. Coroners collect and send the DNA samples to DOJ, and DOJ returns the samples to the coroner (§ 14250, subd. (c)(1)). Neither the statute nor the DOJ guidelines require the sample to be stored, either before sending to DOJ or upon return. After the sample is returned, the coroner may dispose of it, but is not required to retain or store it.<sup>4</sup>

Therefore, staff deleted the proposed activities to maintain, store, retain, and refrigerate evidence because the Commission denied them in the Statement of Decision.

#### Destroying the Maintained Evidence after a Positive Identification is Made

The SCO and DOF recommended deletion of the proposed activity to destroy maintained evidence. The SCO argues that this activity is not mandated by the state. DOF asserts that it is not reimbursable because local agencies are not required to maintain samples after a positive identification is made; DOJ only returns DNA from unidentified remains to the coroner.

The Statement of Decision quoted a comment made by DOJ regarding DNA samples: “[R]emains that are not consumed in the testing will be returned to the County coroner/medical examiner, but as these are not from living persons, they would not be destroyed but rather returned to the family for cremation or burial.”<sup>5</sup> Thus, staff finds that if a positive identification is made, the coroner notifies the family and does not have to destroy the evidence. Regarding samples from unidentified deceased persons, staff finds that the DNA evidence stays with the remains and would be reburied for preexisting cases. As noted above, reburial of the remains is reimbursable only to the extent that the person remains unidentified or there is no family to which to return the remains. Therefore, staff finds that destroying evidence is not reasonably necessary to comply with the mandate; staff deleted the activity.

#### Explaining the Standard Release Form

The SCO recommended deletion of the proposed activity for law enforcement agencies to explain the standard release form to the public. The SCO maintains that explaining the release form is a routine process done during the ordinary course of business.

DOF suggested that the activity to explain the DOJ standard release form to the public be removed from the parameters and guidelines as an independent reimbursable activity because the standard release form would be explained at the time the relatives agree to voluntarily provide a DNA sample.

In response to DOF's comment, the County of San Bernardino proposes that the activity be included as part of the activity to inform the parents or other appropriate relatives that they may give a voluntary sample for DNA testing.

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<sup>4</sup> Exhibit A, page 112.

<sup>5</sup> Exhibit A, page 106.

Staff agrees with DOF that the DOJ standard release form would be explained at the time relatives agree to voluntarily provide a DNA sample. Therefore, staff deleted this proposed activity because staff finds that it is part of the activity of informing relatives that they may give a voluntary sample for DNA testing.

#### Reverifying the Status of a Missing Person and Sending the Samples to DOJ with a Copy of the Crime Report

Consistent with the Statement of Decision, the SCO recommended adding the activity for law enforcement agencies to send samples to DOJ for DNA testing and inclusion in the DNA data bank. DOF also proposed the addition of activities for law enforcement agencies that were approved in the Statement of Decision but left out of the claimants' proposal: 1) reverifying the status of a missing person before submitting a DNA sample to DOJ, and 2) sending the DNA sample and any supplemental information to DOJ with a copy of the crime report 30 days after the filing of a report. The County of San Bernardino agreed with DOF that two of the approved law enforcement activities were inadvertently omitted from the claimants' proposal; the County requested that these activities be added to the parameters and guidelines.

The Commission found that reverifying the status of a missing person before submitting a DNA sample to DOJ, and sending the DNA sample and any supplemental information to DOJ with a copy of the crime report are mandated by the state. The claimants inadvertently omitted them from their proposal, and therefore, staff added them as reimbursable activities for law enforcement agencies.

#### ***VII. Offsetting Savings and Reimbursements***

Staff proposes that any funds distributed to counties by DOJ for purposes of pathology and exhumation pursuant to Penal Code section 14251, subdivision (b), shall also be identified and deducted from claims.

#### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified, beginning on page 13.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.



## PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 14250

Statutes 2000, Chapter 822

Statutes 2001, Chapter 467

*DNA Database (00-TC-27)*

and amendment to

*Postmortem Examinations: Unidentified Bodies (02-TC-39)*

County of San Bernardino and County of Los Angeles, Claimants

### I. SUMMARY OF THE MANDATE

~~Chapter 822, Statutes of 2000, adding Penal Code section 14250(b) and Section 14250 (c)(1) and Chapter 467, Statutes of 2001, amending Penal Code Section 14250 (b) and Section 14250 (c)(1), relating to DNA, sets forth requirements for the State Department of Justice (DOJ) to create a data bank of DNA samples for two purposes: (1) to identify deceased persons or remains, and (2) to close missing persons cases. To build the data bank, DNA samples are collected by coroners from unidentified human remains, and DNA samples are collected by law enforcement agencies from missing persons' relatives or a missing person's personal articles.~~

~~The statute requires coroners to take DNA samples from unidentified human remains and deliver them to the State Department of Justice (DOJ). Local law enforcement agencies investigating a missing person are required to inform the missing person's parents or other relatives that they may give a DNA sample for the database. DOJ accepts DNA samples submitted by both coroners and local law enforcement agencies and administers the database and data bank. DOJ compares DNA samples taken from high risk missing persons, or from their parents or appropriate relatives.~~

~~The test claim statute requires those collecting DNA samples to follow DOJ guidelines. DOJ has released two informational bulletins that contain the standards and guidelines for this program. In October 2001, DOJ issued Information Bulletin 01-BFS-04, attached herein as Exhibit A, which details the standards and guidelines that coroners follow in collecting DNA samples from unidentified bodies or remains. In July 2002, DOJ released Information Bulletin 02-BFS-03, attached herein as Exhibit B, which describes guidelines for local law enforcement agencies to follow in collecting DNA from family members or missing persons' articles ("living Persons").~~

~~On July 29 September 30, 2004, the Commission on State Mandates (Commission) adopted its Statement of Decision that the test claim legislation Penal Code section 14250 constitutes a reimbursable state-mandated program upon local governments within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for to perform the following activities for coroners and law enforcement agencies investigating the death of an unidentified person:~~

- For coroners to collect samples for DNA testing from the remains of unidentified persons and send the samples to [the Department of Justice (DOJ)] in accordance with the DOJ-developed standards and guidelines [see DOJ Information Bulletins 01-BFS-04 and 02-BFS-03] (as cited above) for preservation and storage of DNA samples (Pen. Code, § See-14250, subs. (b) & (c)(1)). This does not include storing DNA samples from remains of unidentified deceased persons either before sending to DOJ or upon return. It does include exhumation in circumstances where it is the only alternative available to meet the reporting needs under the test claim statute.
- For local law enforcement to: (1) inform parents or other appropriate relatives of those missing under high-risk circumstances (as defined) that they may give a voluntary sample of DNA within 30 days after making a report, and (2) take a DNA sample in a manner prescribed by DOJ, including using a model kit (Pen. Code, See. § 14250, subs. (c)(2) & (c)(4)).
- For local law enforcement to: (1) ~~to~~ reverify the status of a missing person before submitting a DNA sample to DOJ, and (2) send the DNA sample and any supplemental information to DOJ with the crime report 30 days after the filing of a report (Pen. Code, See. § 14250, subd. (c)(5)).

## II. ELIGIBLE CLAIMANTS

The eligible claimants are aAny county, city, or city and county, ~~school district, or community college district~~ that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), as amended by Statutes 2004, chapter 890, states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. ~~The original test claim to recover law enforcement agency “costs mandated by the State”, as defined in Government Code Section 17514, in Chapter 822, Statutes of 2000, was filed by t~~ The County of San Bernardino filed the DNA Database test claim on July 5, 2001. ~~However, Chapter 822, Statutes of 2000, chapter 822 was enacted on September 28, 2000 and became effective on and operative on~~ January 1, 2001. Accordingly, ~~reimbursement for local law enforcement costs begins on the statute’s effective date of January 1, 2001 as this date is within the period specified in Government Code section 17557 costs incurred in compliance with Statutes 2000, chapter 822 on or after January 1, 2001, are eligible for reimbursement.~~

~~The test claim to recover coroner’s “costs mandated by the State”, as defined in Government Code Section 17514, in Chapter 467, Statutes of 2001, was filed by the County of Los Angeles filed the test claim amendment to *Postmortem Examinations: Unidentified Bodies* on June 25, 2003. However, Chapter 467, Statutes of 2001, chapter 467, which was enacted on October 4, 2001 and became effective and operative on January 1, 2002, only clarified Penal Code section 14250 and did not require additional activities. Accordingly, reimbursement for coroner’s costs begins on the statute’s effective date of January 1, 2002, as this date is within the period specified in Government Code section 17557.~~

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government

Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial year's costs shall be submitted to the Controller within 120 days of ~~notification by the State Controller of~~ the issuance ~~date for the~~ claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

#### IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, ~~cost allocation reports (system generated), invoices, and receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.~~

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities ~~performed by local law enforcement personnel or performed by personnel designated to perform the subject reporting function in a local jurisdiction, such as coroner personnel, are eligible for reimbursement~~ are reimbursable:

##### A. ~~One-time Activities~~ Coroners: One-Time Activities

- ~~1. Coroners to d~~Develop internal policies and procedures for collecting samples for DNA testing from the remains of unidentified persons and send the samples to DOJ in accordance with the DOJ developed standards and guidelines for preservation and storage of DNA samples to implement the activities listed under Sections IV.A. and IV.B. of these parameters and guidelines (Pen. Code Sec. 14250, subds. (b) & (c)(1)).
- ~~2. Local law enforcement to develop policies and procedures for: (1) inform parents or other appropriate relatives of those missing under high-risk circumstances (as defined by Penal Code Sec. 14213) that they may give a voluntary sample of DNA within 30 days after making a report, and (2) take a DNA sample in a manner prescribed by DOJ, including using a model kit (Pen. Code Sec. 14250, subds. (c)(2) & (c)(4))~~

32. Train each staff person who may be required to initiate, prepare, or file some or all of the subject DOJ samples for complying with DOJ's reporting requirements. (*One-time activity per employee*).
4. ~~Obtain, develop or modify specialized software for collecting the subject DOJ samples in a timely and economical manner. If the specialized software is used for other purposes, only the pro rata costs of the software, including licensing agreement, that is related to reimbursable activities specified herein, may be claimed under Materials and Supplies and/or Contracted Services.~~

## B. Continuing Activities

### For Coroners:

#### B. Coroners: Ongoing Activities

1. Collecting samples for DNA testing from the remains of all unidentified persons, ~~including all costs associated with the exhumation and reburial of the remains for preexisting cases; This includes exhumation in circumstances where it is the only alternative available to meet the reporting needs under the test claim statute (Pen. Code, § 14250, subs. (b) & (c)(1)). This also includes reburial of the remains to the extent the person remains unidentified or there is no family to which to return the remains.~~
2. ~~Sending those collected samples to DOJ for DNA testing and inclusion in the DNA data bank; in accordance with DOJ-developed standards and guidelines for preservation and storage of DNA samples (Pen. Code, § 14250, subs. (b) & (c)(1); DOJ Information Bulletin 01-BFS-04).~~
1. ~~Maintaining the evidence (DNA samples) returned to DOJ;~~
2. ~~Storing, retaining, and refrigerating the evidence (DNA sample);~~
3. ~~Destroying the maintained evidence (DNA sample) after a positive identification is made and a report is issued by DOJ; and~~
4. ~~Training employees on an on-going basis to assure compliance with this section.~~

#### C. For Law Enforcement: One-Time Activities

1. Develop internal policies and procedures to implement the activities listed under Sections IV.C. and IV.D. of these parameters and guidelines.
2. Training for each law enforcement personnel involved in collecting DNA samples, limited to 20 minutes. Agencies may choose to have employees view the 20-minute Missing Persons DNA training video developed by the Commission on Peace Officer Standards and Training and the Office of the Attorney General (DOJ Information Bulletin 02-BFS-03). (*One-time activity per employee*.)

#### D. Law Enforcement: Ongoing Activities

1. Within 30 days after making a report, informing the parents or other appropriate relatives of those missing under high-risk circumstances (as defined by Pen. Code, § 14250, subd. (a)(4)) that they may give a voluntary sample for DNA testing or may collect a DNA sample from a personal article belonging to the missing person, if available (Pen. Code, § 14250,



subds. (c)(2) & (c)(4)).; This includes explanation of the standard release form developed by DOJ.

2. Taking DNA samples in a manner ~~proscribed~~ prescribed by ~~the department of justice DOJ,~~ including ~~reimbursement for the use of~~ model DNA sample kits (Pen. Code, ~~See. §~~ § 14250, subds. (c)(2) & (c)(4); DOJ Information Bulletin 02-BFS-03).;

~~2.Explaining the standard release form developed by the DOJ to the public;~~

~~3.Developing data bases to track the time requirements mandated under this section; and~~

3. Reverifying the status of a missing person before submitting a DNA sample to DOJ (Pen. Code, § 14250, subd. (c)(5)).

4. After 30 days has elapsed from the date the report was filed, sending the DNA sample and any supplemental information to DOJ with a copy of the crime report (Pen. Code, § 14250, subd. (c)(5)).

~~4.Training employees on an ongoing basis to assure compliance with this section.~~

## **V. CLAIM PREPARATION AND SUBMISSION**

~~Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate. The following requirements govern claiming actual costs.~~

### ~~A. Salaries and Benefits~~

~~Claimed reimbursement for employee costs should be supported by name, position, productive hourly rate, hours worked, fringe benefits amount and a brief description for the assigned unit and function relative to the mandate.~~

~~The source documents required to be maintained by the claimant may include, but are not limited to, employee time cards and/or cost allocation reports.~~

### ~~B. Materials and Supplies~~

~~Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.~~

~~The source documents required to be maintained by the claimant may include, but are not limited to, invoices, lease documentation and other documents evidencing the validity of the expenditure.~~

### ~~C. Contracted Services~~

~~List costs incurred for contract services, including legal counsel for the development and operation of the mandated program and indirect costs, computed in accordance with OMB A-87 as described in Section V.G. (below), for administration of reimbursable contract(s). Use of contract services must be justified by the claimant.~~

~~Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the~~

~~activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.~~

#### ~~D. Fixed Assets and Equipment~~

~~Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro rata portion of the purchase price used to implement the reimbursable activities can be claimed.~~

~~The source documents required to be maintained by the claimant may include, but are not limited to, contracts, charges, invoices, and statements.~~

#### ~~E. Travel~~

~~Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element V.A Salaries and Benefits, for each applicable reimbursable activity.~~

#### ~~F. Training~~

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element V.A., Salaries and Benefits, and V.B., Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element V.C., Contracted Services. This data, if too voluminous to be included with the claim, may be reported in summary. However, supporting data must be maintained as described in Section VI.~~

#### ~~G. Indirect Cost Rates~~

~~Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate or (2) the indirect costs of administering reimbursable contract(s), or (3) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.~~

~~Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or where applicable, 10% of the amount of reimbursable contract(s), if 50% or more of all reimbursable services are provided under~~

~~contract, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.~~

~~If the claimant chooses to prepare an ICRP, both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B).~~

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

#### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

##### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

##### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

##### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

##### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

## 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

## B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> 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. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds and other state funds shall be identified and deducted from this claim. Any funds distributed to counties by DOJ for purposes of pathology and exhumation pursuant to Penal Code section 14251, subdivision (b), shall also be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the ~~statute or executive order creating the mandate~~ test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform ~~with the statute or executive order creating the mandate and to~~ the parameters and guidelines adopted by the Commission, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform ~~to the statute or executive order creating the mandate and~~ the parameters and guidelines ~~adopted as directed~~ by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (da), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.