

ITEM 12
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Penal Code Section 1417.3

Statutes 1985, Chapter 875

Statutes 1986, Chapter 734

Statutes 1990, Chapter 382

Photographic Record of Evidence
04-PGA-09 (04-RL-9807-09)

EXECUTIVE SUMMARY

On October 26, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that the *Photographic Record of Evidence* program (as enacted by Stats. 1985, ch. 875, Stats. 1986, ch. 734, and Stats. 1990, ch. 382) imposes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and costs mandated by the state pursuant to Government Code section 17514 for the following:

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Statutes 2004, chapter 316, section 3, subdivision (d), (Assem. Bill No. (AB) 2851) directed the Commission to reconsider the prior final decision for the *Photographic Record of Evidence* program.

Section three of AB 2851 states the following:

Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

. . . (d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990) . .

On November 8, 2004, the State Controller's Office requested that the parameters and guidelines for the *Photographic Record of Evidence* program be amended once the Commission completes reconsideration of the program.¹

On July 28, 2005, the Commission found, effective July 1, 2005, that Penal Code section 1417.3, subdivision (b) requires providing, for exhibits in criminal trials that are toxic by their nature that pose a health hazard to humans: (1) a photographic record of evidence; (2) a written chemical analysis certified by a competent authority; and (3) for cities alone, storage of toxic exhibits. The Commission found that these activities impose a reimbursable state mandate on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556. The Commission found that all other activities are no longer required. Accordingly, this item proposes to delete the activities from the parameters and guidelines that the Commission determined not to be reimbursable.

Discussion

Amendment of Parameters and Guidelines

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 parameters and guidelines.

Section II. Eligible Claimants

This section was amended to clarify that activity IV. D (storage of exhibits) only applies to cities, and the section was amended to clarify that only counties, cities, and a city and county that put on evidence in criminal trials are eligible claimants in conformance with the Statement of Decision.

Section III. Period of Reimbursement

Staff modified this section to include a new reimbursement period beginning July 1, 2005.

Section IV. Reimbursable Activities

Staff made the following changes to this section:

1. Deleted the activity of developing internal policies and manuals to implement the activities because this activity should have already been completed.
2. Clarified that activities are only reimbursable in criminal trials for exhibits toxic by their nature that pose a health hazard to humans.
3. Deleted the language that required claimants to provide supporting documentation showing that the court deemed exhibits a security, safety or storage problem because this criteria no longer exists in the Statement of Decision.
4. Clarified that only cities are eligible for reimbursement for storing these toxic exhibits.

Commission staff issued a draft staff analysis and the proposed amendments to the parameters and guidelines on October 17, 2005. No comments were filed on the draft staff analysis or proposed amendments to the parameters and guidelines.

¹ Exhibit A.

Staff Recommendation

Staff recommends the Commission adopt the proposed amendments to the parameters and guidelines for the *Photographic Record of Evidence* program beginning on page 5.

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 Amendment

Penal Code Section 1417.3

Statutes of 1985, Chapter 875

Statutes of 1986, Chapter 734

Statutes of 1990, Chapter 382

Photographic Record of Evidence, 04-PGA-09 (04-RL-9807-09)

I. ~~SUMMARY AND SOURCE OF THE MANDATE~~

~~Penal Code section 1417.3, as added by Statutes of 1985, chapter 875, and amended by Statutes of 1986, chapter 734, and Statutes of 1990, chapter 382, requires a photographic record of evidence, and in some instances a certified chemical analysis of the exhibit, for those exhibits in a criminal trial that pose a security, storage, or safety problem, or if the exhibit, by its nature, is toxic and poses a health hazard to humans.~~

On October 26, 2000, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that the test claim legislation *Photographic Record of Evidence* program (as enacted by [Stats. 1985, ch. 875](#), [Stats. 1986, ch. 734](#), and [Stats. 1990, ch. 382](#)) imposes ~~constitutes a new program or higher level of service reimbursable state mandated program upon law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and costs mandated by the state pursuant to Government Code section 17514 for the following:~~

- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- Activities reasonably necessary to provide a photographic record of evidence for evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The provision of a certified written chemical analysis of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)
- The storage of evidence that poses a security, safety, or storage problem as determined by the court. (Pen. Code, § 1417.3, subd. (a).)
- The storage of evidence that poses a health hazard. (Pen. Code, § 1417.3, subd. (b).)

Statutes 2004, chapter 316, section 3, subdivision (d), (Assem. Bill No. 2851) directed the Commission to reconsider the prior final decision for the *Photographic Record of Evidence* program. On November 8, 2004, the State Controller's Office requested that the parameters and guidelines for the *Photographic Record of Evidence* program be amended once the Commission completes reconsideration of the program. On July 28, 2005, the Commission found, effective July 1, 2005, that Penal Code section 1417.3, subdivision (b) requires [providing for exhibits in criminal trials that are toxic by their nature that pose a health hazard to humans](#): (1) a photographic record of evidence; (2) a written chemical analysis certified by a competent authority; and (3) [for cities alone, storage of toxic exhibits](#). The Commission found that these [activities](#) impose a reimbursable state mandate on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556. The Commission found that all other activities are no longer required.

II. ELIGIBLE CLAIMANTS

Counties, cities, or a city and county, (except for activity IV. D that only applies to cities) ~~school districts and special districts that have law enforcement agencies that put on evidence introduce exhibits in criminal trials~~ are eligible claimants.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begins on July 1, 2005.

~~Section 17557 of the Government Code states that a test claim must be submitted on or before June 30th following a fiscal year to establish eligibility for reimbursement for that fiscal year. This test claim was filed by the City of Los Angeles, Police Department on October 23, 1998. Therefore, costs incurred for Statutes of 1985, chapter 875, Statutes of 1986, chapter 734, and Statutes of 1990, chapter 382, are eligible for reimbursement on or after July 1, 1997.~~

~~Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included in the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days from the date on which the State Controller issues claiming instructions.~~

~~If total costs for a given year do not exceed \$200.00, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable 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), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, 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 as noted below, the following activities are eligible for reimbursement:

A. Administrative Activities (counties, cities, or a city and county)

~~1. Developing internal policies, procedures, and manuals, to implement the activities listed in sections IV.B, IV.C, and IV.D of these Parameters and Guidelines (one-time activity).~~

~~2.1.~~ Maintaining files manually or electronically pursuant to implementation of activities listed in sections IV.B, IV.C, and IV.D. of these Parameters and Guidelines. The cost of this activity will be prorated for photographs actually introduced or offered as exhibits in criminal trials (ongoing activity).

B. Photographic Record of Evidence (Pen. Code, § 1417.3 ~~subd. (ab)~~) (counties, cities, or a city and county)

~~For~~ In criminal trials, provide a photographic record of exhibits that are toxic by their nature pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans, including the definition of hazardous waste in 40 Code of Federal Regulations part 261, or human health hazards which are subject to Health and Safety Code sections 117600 *et seq.*, or Health and Safety Code sections 25140, *et seq.*:

1. Purchasing equipment and supplies reasonably necessary to photograph the exhibits, whether for digital or film pictures, including, but not limited to: cameras, developing equipment, laser printers, software, film, computers, and storage.

2. Taking of the photographs, sorting and storing photographs, and developing and printing photographs. This activity is limited to photographs actually introduced or offered into evidence as exhibits.

C. Provision of Certified Written Chemical Analysis (Pen. Code, § 1417.3 subd. (b)) (counties, cities, and a city and county)

For those exhibits introduced in criminal trials toxic by their nature that pose a health hazard to humans, the sampling, analysis, and preparation of a written report by a laboratory certified by the State of California for performing the chemical analysis. This does not include reimbursement for sampling, analysis, or report preparation for controlled substances, including those defined in Health and Safety Code section 11054 et seq. unless the exhibit is toxic and poses a health hazard to humans.

D. Storage of Exhibits (Pen. Code, § 1417, subd. (b), Cal. Code of Regs., tit. 2, § 1183.1(a)) (cities only)

For exhibits introduced in criminal trials, storing exhibits toxic by their nature that pose a security, safety, or storage problem as determined by the court, or for exhibits that pose a health hazard to humans for which the city local entity offers or introduces a photographic record of evidence. Transportation to and maintenance within an appropriate storage facility for the type of toxic exhibit. Storage of the exhibit shall be from the time of photographing until after final determination of the action as prescribed by Penal Code sections 1417.1, 1417.5, 1417.6, ~~or court order or rule of court that dictates the retention schedule for exhibits in criminal trials.~~

V. CLAIM PREPARATION AND SUBMISSION

~~Each claim for reimbursement pursuant to this mandate must be timely filed and identify each of the following cost elements for each reimbursable activity identified in section IV of this document.~~

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 ~~D~~irect costs ~~that~~ are eligible for reimbursement ~~are~~:

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 these 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 based on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name(s) of the contractor(s) and service(s) performed to implement the reimbursable activities. Attach a copy of the contract to the claim. 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 dates when services were performed and itemize all costs for those 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 Costs

Compensation for indirect costs is eligible for reimbursement.

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out the state-mandated programs, and (b) the costs of central

governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

~~1. School Districts~~

~~School districts must use the J-380 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.~~

~~County offices of education must use the J-580 (or subsequent replacement) nonrestrictive indirect cost rate provisionally approved by the California Department of Education.~~

~~Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.~~

2. Counties, Cities and a City or County Special Districts

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 Attachment 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 two following methodologies:

- a. 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.
- b. The allocation of allowable indirect costs (as defines and described in OMB Circular A-87 Attachment 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 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.

VI. SUPPORTING DATA

A. Source Documents

~~For auditing purposes, all incurred costs claimed must be traceable to source documents that show evidence of the validity and their relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, 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.~~

B. Record Keeping

~~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 is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. See the State Controller's claiming instructions regarding retention of required documentation during the audit period.~~

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 chapter¹ 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 statute or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim. This includes offsets pursuant to Health and Safety Code section 11642, subdivision (c)(1) which authorizes the State Controller, to the extent funds are available, to reimburse counties with population under 1.75 million for the cost of removal, disposal or storage of toxic waste from clandestine drug labs.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

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

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

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations, section 1183.2.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised 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 test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), 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.

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 to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), 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.