

ITEM 17

PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Misdemeanors: Booking and Fingerprinting

04-PGA-20 (CSM-4436)

Penal Code Section 853.6

Statutes 1992, Chapter 1105

Amended By Statutes 2004, Chapter 889
(Assem. Bill No. 2853 (AB 2853), § 4, eff. Sept. 29, 2004)

EXECUTIVE SUMMARY

Background

On February 24, 1994, the Commission on State Mandates (Commission) adopted its Statement of Decision finding a reimbursable state-mandated program in the verification requirements of Penal Code section 853.6, subdivision (g). The Commission concluded that only the portion of the test claim statute related to the verification procedure is a new program or higher level of service in an existing program imposed upon local agencies, but that it is very limited in scope. The Commission concluded that the verification procedure requires the arresting agency, at the time of booking or fingerprinting, to provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency. On November 17, 1994, the Commission adopted parameters and guidelines for this program.

Statutes 2004, chapter 889 (AB 2853, § 4) amended the test claim statute and deleted the alternative that allowed local agencies to “provide the arrested person a verification form established by the arresting agency.” This urgency legislation was effective on September 29, 2004.

On November 8, 2004, the State Controller’s Office (SCO) requested amendment of the parameters and guidelines because the mandate was made optional.¹

Discussion

Staff reviewed the legislation and the SCO’s request. Non-substantive changes were made to Section II, Eligible Claimants. Staff modified all other sections of the parameters and guidelines as discussed below.

I. Summary of the Mandate

This section was amended to include information regarding AB 2853 and to make the section consistent with other parameters and guidelines that the Commission recently adopted.

¹ Exhibit A.

III. *Period of Reimbursement*

Government Code section 17557 provides that a request for amendment of parameters and guidelines filed more than 90 days after the claiming deadline for initial reimbursement claims, and on or before January 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year. The SCO requested that these parameters and guidelines be amended on November 8, 2004, which would make the proposed amendments effective July 1, 2004. However, the legislation that caused the need for the amendments did not become effective until September 29, 2004. Staff revised this section to clarify that effective September 29, 2004, the reimbursable activities related to implementation costs and local arresting agency verification forms are no longer eligible for reimbursement.

This section was also revised to include language adopted by the Legislature and the Commission since these parameters and guidelines were originally adopted in 1994. When these parameters and guidelines were adopted, the minimum threshold for filing reimbursement claims was \$200. In 2002, that amount was increased to \$1,000.² The proposed revisions reflect this increase.

IV. *Reimbursable Activities*

This section was revised to include language regarding supporting documentation requirements adopted by the Commission. This section was also revised to update the reimbursable activities based on the 2004 amendment.

Article XIII B, section 6 of the California Constitution states that “whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds.” (Emphasis added.) This constitutional provision was specifically intended to prevent the state from forcing programs on local government that *require* expenditure by local governments of their tax revenues.³ To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines “costs mandated by the state” as “any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” (Emphasis added.)

Thus, in order for a statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that local governmental agencies perform an activity or task. If the statutory language does not mandate local agencies to perform a task, then compliance with the test claim statute is within the discretion of the local agency and a reimbursable state-mandated program does not exist.

Penal Code section 853.6, subdivision (g), as amended by Statutes 2004, chapter 889 (AB 2853, § 4), deleted “either” preceding “making an entry” in the second sentence, and deleted “or providing the arrested person a verification form established by the arresting agency”

² Statutes 2002, chapter 1124 (Assem. Bill No. 3000).

³ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

following “on the citation” in the second sentence. Subdivision (g), in relevant part, now states, as follows:

The officer may book the arrested person prior to release or indicate on the citation that the arrested person shall appear at the arresting agency to be booked or indicate on the citation that the arrested person shall appear at the arresting agency to be fingerprinted prior to the date the arrested person appears in court. If it is indicated on the citation that the arrested person shall be booked or fingerprinted prior to the date of the person’s court appearance, the arresting agency at the time of booking or fingerprinting shall provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency....

Under the rules of statutory construction, the Commission may not disregard or enlarge the plain provisions of a statute, nor may it go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.⁴ This prohibition is based on the fact that the California Constitution vests the Legislature with policymaking authority. As a result, the Commission has been instructed by the courts to construe the meaning and effect of statutes analyzed under article XIII B, section 6 strictly.⁵

The parameters and guidelines authorize reimbursement for the following activities:

1. Implementation Costs. Allowable costs include preparation of the verification form established by the arresting agency and job-required training for the local agency personnel limited to the correct use of the form or making an entry on the citation.
2. Ongoing Annual Costs. Allowable costs include all reasonably necessary costs incurred by the local agency to complete and provide the arrestee with a document which verifies that he/she has been booked or fingerprinted.

There is no longer a statutory provision authorizing local agencies to develop and use a “verification form.” Thus, all of the activities related to the verification form should be deleted from the reimbursable activities.

- The first activity titled “Implementation Costs” includes one-time costs to prepare the verification form and job-required training limited to the correct use of the form and making an entry on the citation.

“Implementation Costs” are “one-time” costs which should already have been claimed during the initial reimbursement period, beginning on January 1, 1993. Staff also notes that training is not required by the test claim statute. Accordingly, staff recommends deletion of all “Implementation Costs.”

⁴ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757; *In re Rudy L.* (1994) 29 Cal.App.4th 1007, 1011.

⁵ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817.

- The second activity, “On-going Costs” includes “all reasonably necessary costs incurred by the local agency to complete and provide the arrestee with a *document* which verifies that he/she has been booked or fingerprinted.”

In its decision, the Commission concluded that the verification procedure requires the arresting agency, at the time of booking or fingerprinting, to provide the arrested person with *verification of the booking or fingerprinting* by either *making an entry on the citation* or *providing the arrested person a verification form* established by the arresting agency. Staff finds that arresting agencies are not required to provide the arrestee with a verification form; therefore, this activity is no longer reimbursable. However, the statute still requires an arresting agency to provide the arrestee with “verification of booking or fingerprinting by making an entry on the citation.” Therefore, staff finds that this activity is still reimbursable and will remain in the parameters and guidelines.

Sections V. through X.

The remaining sections were updated to make these parameters and guidelines consistent with language in recently adopted parameters and guidelines.

Staff Recommendation

Staff recommends the Commission adopt the proposed amendments to the parameters and guidelines for the *Misdemeanors: Booking and Fingerprinting 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.

Adopted: November 17, 1994
Proposed for Amendment: September 27, 2005

Proposed Parameters and Guidelines Amendment

Penal Code ~~§~~ Section 853.6

~~Chapter 1105, Statutes of 1992~~ Statutes 1992, Chapter 1105
Amended by Statutes 2004, Chapter 889 (Assem. Bill No. 2853, § 4)

Misdemeanors: Booking and Fingerprinting

I. SUMMARY OF THE MANDATE

~~Chapter 1105, Statutes of 1992~~ Statutes 1992, chapter 1105, amended Penal Code section § 853.6 to revise the process for booking and fingerprinting of persons arrested for a misdemeanor.

At its hearing of January 20, 1994, the Commission found a reimbursable state mandated program in the verification requirements of Penal Code section 853.6, subdivision (g). The Commission adopted the Statement of Decision on this mandate on February 24, 1994.

The Commission concluded that only the portion of Penal Code section 853.6, subdivision (g), related to the verification procedure imposed a new program or a higher level of service in an existing program within the meaning of section 6 of article XIII B of the California Constitution and Government code section 17514. The Commission concluded that this verification procedure is a new program or a higher level of service in an existing program imposed upon local agencies, but that this new program or higher level of service in an existing program is very limited in scope. The Commission concluded that this verification procedure requires the arresting agency, at the time of booking or fingerprinting, to provide the arrested person with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency.

Statutes 2004, chapter 889 (Assem. Bill No. 2853, § 4) amended the test claim statute and deleted the alternative that allowed local agencies to “provide the arrested person a verification form established by the arresting agency.” This urgency legislation was effective on September 29, 2004.

~~H. Commission on State Mandates Decision~~

~~At its hearing of January 20, 1994, the Commission found a reimbursable state mandated program in the verification requirements of Penal Code section 853.6, subdivision (g). The Commission adopted the Statement of Decision on this mandate on February 24, 1994.~~

III.II. ELIGIBLE CLAIMANTS

Local law enforcement agencies with the authority to make misdemeanor arrests.

IV.III. PERIOD OF REIMBURSEMENT

The period of reimbursement for this amendment begins on September 29, 2004.

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

1. A local agency or school district 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 or school district 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 or school district 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 (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.

V.IV. REIMBURSABLE COSTS 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, 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 are reimbursable:

A. Scope of Mandate

~~Cities and counties shall be reimbursed for the increased costs which they are required to incur to provide the arrested person, at the time of booking or fingerprinting, with verification of the booking or fingerprinting by either making an entry on the citation or providing the arrested person a verification form established by the arresting agency.~~

B. Reimbursable Activities

~~For each eligible claimant, the following is reimbursable:~~

1. Implementation Costs

~~Allowable costs include preparation of the verification form established by the arresting agency and job required training for the local agency personnel limited to the correct use of the form or making an entry on the citation.~~

2. Ongoing Annual Costs

~~Allowable costs include all reasonably necessary costs incurred by the local agency to complete and provide the arrestee with a document which verifies that he/she has been booked or fingerprinted.~~

A. Ongoing Annual Costs

Making an entry on the citation which verifies that an arrestee has been booked or fingerprinted.

VI.V. CLAIM PREPARATION AND SUBMISSION

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. 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.

B. Indirect Cost Rates

Indirect costs are defined as 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 bear 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 bear 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 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 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.

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 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.

¹ 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 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.