

Adopted: 8/22/91
Amended: 1/29/10

Amendment to Parameters and Guidelines

Penal Code Section 1524.1

Statutes 1988, Chapter 1088,

Search Warrant: AIDS
05-PGA-17 (CSM 4392)

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement

I. Summary of Mandate

Penal Code section 1524.1, as added by Chapter 1088, Statutes of 1988, allows a crime victim the right to request AIDS testing on persons charged with a crime.

Under Penal Code section 1524.1, a crime victim may request a court to issue a search warrant to test the blood of a person charged with a crime for the human immunodeficiency virus (HIV) when there has been a transfer of blood, semen, or any other body fluid identified by the Department of Health Services as capable of transmitting the AIDS virus to another individual. Penal Code section 1524.1 applies to all crime victims, and includes sexual assault crimes, nonsexual crimes, and crimes where peace officers are victims. It applies to both adults and minors charged with crimes.

The District Attorney's Office is mandated by law to notify all crime victims falling within the provisions of Penal Code section 1524.1 of their right to request a search warrant. By law, a search warrant must be signed by a magistrate before any blood of the person charged with a crime can be drawn. Penal Code section 1524.1 allows the victim to request the court to issue a search warrant to require HIV testing of the accused, (1524.1(d)), and the District Attorney prepares the search warrant.

The local health officer is mandated by law within the provisions of Penal Code section 1524.1 to assist the victim in determining whether to request a search warrant for HIV testing and whether to request a test for him- or herself. The local health officer is required to administer the HIV test as specified in Penal Code section 1524.1(b) and to confirm and keep confidential those results, as specified. The local health officer is also required to offer professional counsel to the victim and the offender, as specified.

II. Commission on State Mandates Decision

Section 2 of Chapter 1088, Statutes of 1988, (Senate Bill 2643), sets forth a specific mandate for expenditures required by the legislation by any city or county office such as the District Attorney's Office, and provides that reimbursement shall be made pursuant to Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code; therefore, no test claim is required. The draft parameters and guidelines were submitted on December 31, 1990, thus establishing eligibility for fiscal year 1990-91.

III. Eligible Claimants

Any city or county which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

Costs that are reimbursable under the Brown-Presley Trial Court Funding Act of 1985, commencing with Government Code section 77000, cannot be claimed for this state mandated program.

IV. Period of Reimbursement

This amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

Chapter 1088, Senate Bill 2643, was approved by the Governor on September 20, 1988, and became law on January 1, 1989. The city or county is seeking reimbursement for enforcement and implementation of the new legal procedures for the fiscal year beginning July 1, 1990, to June 30, 1991.

Actual costs for each fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

V. Reimbursement 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 under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." 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.

A. Scope of Mandate

Any city or county shall be reimbursed for the reasonable and necessary increased costs which they are required to incur to notify all crime victims of their right to request a search warrant for the purpose of testing the blood of the accused for the HIV virus in any case where there is probable cause to believe that blood, semen, or any other body fluid (identified by the State Department of Health Services in appropriate regulations) has been transferred from the accused to the victim. The reimbursable costs include the reasonable and necessary costs of any city or county to share documents, information, and services among themselves and with the victims and suspects.

B. Reimbursable Activities of Penal Code Section 1524.1, Chapter 1088, Statutes of 1988.

For each eligible claimant, the direct and indirect costs of labor, supplies, and services for the following cost items are reimbursable:

1. Develop policies and procedures used by various governmental agencies in the implementation and continued operation of this section;
2. Develop training materials used to conduct training sessions for District Attorneys, law enforcement agencies, court personnel, health department and various other government agencies, and activities that are required by Penal Code Section 1524.1, Chapter 1088, Statutes of 1988.
3. Identify possible AIDS testing cases, per Penal Code Section 1524.1(b). A possible AIDS testing case is one where there is shown in the police reports a probable cause that blood, semen, or any other body fluid identified by the Department of Health Services as capable of transmitting the human immunodeficiency virus to another individual has been transferred from the accused to the victim. Route copies of the criminal complaint to all appropriate personnel and the court.
4. File a "Notice of Testing" document with the court and give the document to the arrested person at his/her arraignment.
5. District Attorney's office to notify the victim of the right under California law to have a defendant tested for AIDS, per Penal Code section 1524.1(c)(1).
6. District Attorney's office or local health officer, as appropriate, to provide trained professional consultation to the victim informing him/her about the spread of the disease, high risk factors for transmitting AIDS, and the benefits and limitations of testing, per Penal Code Section 1524.1(c)(1).
7. If the victim decides to request testing of the person arrested, District Attorney's office to prepare the necessary documentation for the court and support the hearing, if the court finds a hearing applicable. This hearing is to support or rebut the issuance of a search warrant, per Penal Code Section 1524.1(b)(2).
8. District Attorney's office to prepare for and attend a hearing before the court as required by Penal Code Section 1524.1(b)(2).

9. District Attorney's office to prepare, distribute and follow up on all search warrants, per Penal Code Section 1524.1.
10. Local health officer responsible to test the arrested person for the AIDS virus and notify the arrested person and the victim of the test results, per Penal Code Sections 1524.1(e) and (g).
11. Local health officer to provide pre-request counseling to the victim to help the victim to decide whether to ask that the accused be tested, to decide whether the victim wants to be tested, and provide other counseling including post-test counseling when test results are positive to the arrested person and victim, per Penal Code Section 1524.1(g).

VI. Claim Preparation

Each claim for reimbursement for increased costs incurred to comply with the mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed:

A. Attach a statement showing the actual increased costs incurred.

1. Employee Salaries and Benefits.

Show the classification of the employees involved, mandated functions performed, number of hours devoted to the function, and hourly rates and benefits.

2. Services and Supplies.

Include only expenditures which can be identified as a direct cost resulting from the mandate. List cost of materials acquired which have been consumed or expended specifically for the purposes of this mandate.

3. Allowable Overhead Costs.

Cities and counties have the option of using 10% of direct labor as indirect costs or preparing a departmental Indirect Cost Rate Proposal. If the city or county elects to prepare an Indirect Cost Rate Proposal, the Proposal must be prepared in accordance with Office of Management and Budget Circular A-87 (OMB A-87).

VII. 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 V, must be retained during the period subject to audit. If the Controller has

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

initiated an audit during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VIII. Offsetting Savings and Other Reimbursements

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

IX. State Controller's Office Required Certification

An authorized representative of the claimant will 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.