

ITEM __
DRAFT STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES

Penal Code Sections 13730, Subdivision (c)(3), 12028.5;

Statutes 2001, Chapter 483, Statutes 2002, Chapter 833

Crime Victims' Domestic Violence Incident Reports II

02-TC-18

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Background

This test claim addresses Penal Code sections 13730 and 12028.5, which require additional information on the domestic violence incident report form regarding the presence of firearms or weapons at the scene. The statute also requires officers "at the scene of a domestic violence incident involving a threat to human life or a physical assault" to take temporary custody of firearms or weapons in plain sight or discovered pursuant to a consensual or other lawful search, and provides a procedure for return or disposal of the weapon.

Analysis

The claimant submitted draft parameters and guidelines, proposing a reasonable reimbursement methodology (RRM) pursuant to Government Code section 17518.5 based on five factual scenarios. (See Schedule A to claimant's proposed parameters and guidelines.) Under each scenario, the claimant proposes unit times and costs to perform "mandated tasks." The "mandated tasks" include the activities found by the Commission to be state-mandated and activities the claimant contends are the most reasonable methods of complying with the mandated activities pursuant to section 1183.1 of the Commission's regulations.

The Department of Finance opposes the proposed RRM.

Staff finds that the proposed RRM does not satisfy the requirements of Government Code section 17518.5, is based on activities that go beyond the scope of the mandate, and is not supported by evidence in the record that the proposed activities are necessary to carry out the mandated program as required by section 1183.1 of the Commission's regulations.

Staff recommends that the Commission adopt the attached draft proposed parameters and guidelines that contain the mandated activities identified in the Statement of Decision that can be claimed based on actual costs. Language is included in Section IV of the

parameters and guidelines to allow claimants to use time studies to support salary and benefit costs when the activity is task-repetitive as follows:

Claimants may use time studies to support salary and benefit costs when the activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

This time study language has been recently adopted by the Commission in other parameters and guidelines.

Conclusion

Staff recommends that the Commission adopt the draft proposed parameters and guidelines, beginning on page 15.

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

Claimant

County of Los Angeles

Chronology

09/27/07 Statement of Decision adopted
10/18/07 Claimant submits draft parameters and guidelines
10/25/07 Claimant's draft parameters and guidelines issued for comment
11/14/07 Department of Finance files comments on claimant's draft parameters and guidelines

Background

This test claim addresses Penal Code statutes that require additional information on the domestic violence incident report form regarding the presence of firearms or weapons at the scene. The statute also requires officers "at the scene of a domestic violence incident involving a threat to human life or a physical assault" to take temporary custody of firearms or weapons in plain sight or discovered pursuant to a consensual or other lawful search, and provides a procedure for return or disposal of the weapon. The Commission approved the test claim as follows:

Effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance:

- To include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon (Pen. Code, § 13730, subd. (c)(3).

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the activities listed below are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (2) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

- To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
- To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
- To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
- To sell or destroy, as provided in subdivision (c) of Section 12028, any firearm or other deadly weapon taken into custody and held for longer than 12 months and not recovered by the owner or person in lawful possession at the time it was taken into custody. Reimbursement for this activity is not required for firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5, subd. (e).)
- If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)
- To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the

whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)

- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission finds that the following activities are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, for local agencies, when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search.

- The one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
- If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

The claimant submitted draft parameters and guidelines, with the activities listed above as reimbursable activities. The claimant also proposed a reasonable reimbursement methodology (RRM) pursuant to Government Code section 17518.5 with proposed unit times and costs for the activities required by Penal Code sections 13730, subdivision (c)(3), and 12028.5. The proposed RRM includes activities that the claimant contends are activities that are reasonably necessary to comply with the mandated activities. The claimant's proposal is described below.

Claimant's Position

The claimant is proposing an RRM for this program and has developed the RRM based on five scenarios. (See Schedule A of the claimant's proposed parameters and guidelines, and Declaration of Deputy Suzie Ferrell, Field Operations Support Services, Los Angeles County Sheriff's Department.) Under each scenario, the claimant proposes unit times and costs based on "mandated tasks," which include the activities found by the Commission to be state-mandated and those the claimant contends are the most reasonable methods of complying with the mandated activities pursuant to section 1183.1 of the Commission's regulations. The five scenarios, the requested activities, and the proposed unit times and costs are provided below:

1. Scenario – the deputy asks the victim, the suspect, or the witness if firearms are present and no firearms are present.

<u>Mandated Task</u>	<u>Duration</u>	<u>Position</u>	<u>Cost</u>
Inquiry of firearms	2 minutes	Deputy	\$1.52
Document inquiry on incident report	5 minutes	Deputy	\$3.80
Incident report approved	2 minutes	Sergeant	\$1.96
Total minutes:	<u>9 minutes</u>		<u>\$7.28</u>
Employee Benefits			\$3.52
Indirect Costs			\$3.15
Total Costs:			<u>\$13.95</u>

2. Scenario – Deputy asks victim, suspect, or witness if firearms are present. Firearms are present and deputy legally takes temporary custody of the firearm. The suspect has the firearm legally and the firearm is released to the suspect.

<u>Mandated Task</u>	<u>Duration</u>	<u>Position</u>	<u>Cost</u>
Inquiry of firearms	2 minutes	Deputy	\$1.52
Retrieves firearm	5 minutes	Deputy	\$3.80
Renders firearm safe	2 minutes	Deputy	\$1.52
Booking	20 minutes	Deputy	\$15.20
Document inquiry on incident report	5 minutes	Deputy	\$3.80
Incident report approved	2 minutes	Sergeant	\$1.96
Enter info to DOJ/AFS	5 minutes	SSCII	\$1.90
Verify Info/store	5 minutes	LET	\$2.15
Court or Release update records	20 minutes	LET	\$8.60

Prepare to transfer to CP&E	5 minutes	LET	\$2.15
Verify info upon receipt of firearm	5 minutes	EPCIII	\$2.15
Storing firearms	5 minutes	EPCIII	\$2.15
Enter info to database/file docs	5 minutes	ITC	\$1.60
Verify court/release to owner update rec.	10 minutes	EPCIII	\$4.30
Update evidence database & DOJ/AFS	10 minutes	EPCIII	\$4.30
Release firearm	15 minutes	Deputy B1	\$12.30
Lts. Review and signature for release of firearm	5 minutes	Lieutenant	\$5.85
Total minutes:	<u>126 minutes</u>		<u>\$75.25</u>
Employee Benefits			\$36.40
Indirect Costs			\$32.52
Total Costs:			<u>\$144.17</u>

3. Scenario - Deputy asks victim, suspect, or witness if firearms are present. Firearms are present and deputy legally takes temporary custody of the firearm. The suspect has the firearm legally and the detective petitions the court to retain the firearm.

<u>Mandated Task</u>	<u>Duration</u>	<u>Position</u>	<u>Cost</u>
Inquiry of firearms	2 minutes	Deputy	\$1.52
Retrieves firearm	5 minutes	Deputy	\$3.80
Renders firearm safe	2 minutes	Deputy	\$1.52
Booking	20 minutes	Deputy	\$15.20
Document inquiry on incident report	5 minutes	Deputy	\$3.80
Incident report approved	2 minutes	Sergeant	\$1.96
Enter info to DOJ/AFS	5 minutes	SSCII	\$1.90
Verify Info/store	5 minutes	LET	\$2.15
Court or Release update records	20 minutes	LET	\$8.60
Prepare to transfer to CP&E	5 minutes	LET	\$2.15

Verify info upon receipt of firearm	5 minutes	EPCIII	\$2.15
Storing firearms	5 minutes	EPCIII	\$2.15
Enter info to database/file docs	5 minutes	ITC	\$1.60
Prepare petition for retention of firearm	15 minutes	Deputy B1	\$12.30
Notification to suspect of petition for retention of firearm	10	SSCII	\$3.80
Subtotal	<u>111 minutes</u>		<u>\$64.60</u>
<u>Add for Release of Firearm:</u>			
Verify court/release to owner update rec.	10 minutes	EPCIII	\$4.30
Update evidence database & DOJ/AFS	10 minutes	EPCIII	\$4.30
Release firearm	15 minutes	Deputy B1	\$12.30
Lts. Review and signature for release of firearm	5 minutes	Lieutenant	\$5.85
Subtotal for Release of Firearm	<u>40 minutes</u>		<u>\$26.75</u>
<u>Add for destruction of firearm:</u>			
Input and file the property card	5 minutes	ITC	\$1.60
Make disposal authorization	5 minutes	SEPC	\$2.40
Mail disposal authorization	5 minutes	ITC	\$1.60
Make determination if firearm is ready to dispose	2 minutes	SEPC	\$.96
Retrieve the property card and attach disposal authorization	5 minutes	ITC	\$1.60
Destroy/crush firearm	3 minutes	EPCIII	\$1.29
Update computer regarding destruction and file property card	5 minutes	ITC	\$1.60
			<u>\$11.05</u>

Total minutes for release	<u>151 minutes</u>		<u>\$91.35</u>
Add for destruction of firearm:			
Employee Benefits			\$44.19
Overhead			\$39.48
Subtotal Cost			<u>\$175.02</u>
Total minutes for destruction	<u>141 minutes</u>		<u>\$75.65</u>
Employee Benefits			\$36.59
Overhead			\$32.70
Subtotal Cost			<u>\$144.94</u>
<u>Grand Total Cost</u>			<u>\$319.96</u>

4. Scenario - Deputy asks victim, suspect, or witness if firearms are present. Firearms are present and deputy legally takes temporary custody of the firearm. The suspect has the firearm legally but does not request return of the firearm and the firearm is destroyed.

<u>Mandated Task</u>	<u>Duration</u>	<u>Position</u>	<u>Cost</u>
Inquiry of firearms	2 minutes	Deputy	\$1.52
Retrieves firearm	5 minutes	Deputy	\$3.80
Renders firearm safe	2 minutes	Deputy	\$1.52
Booking	20 minutes	Deputy	\$15.20
Document inquiry on incident report	5 minutes	Deputy	\$3.80
Incident report approved	2 minutes	Sergeant	\$1.96
Enter info to DOJ/AFS	5 minutes	SSCII	\$1.90
Verify Info/store	5 minutes	LET	\$2.15
Court or Release update records	20 minutes	LET	\$8.60
Prepare to transfer to CP&E	5 minutes	LET	\$2.15
Verify info upon receipt of firearm	5 minutes	EPCIII	\$2.15
Storing firearms	5 minutes	EPCIII	\$2.15
Input and file the property card	5 minutes	ITC	\$1.60

Make disposal authorization	5 minutes	SEPC	\$2.40
Mail disposal authorization	5 minutes	ITC	\$1.60
Make determination if firearm is ready to dispose	2 minutes	SEPC	\$.96
Retrieve the property card and attach disposal authorization	5 minutes	ITC	\$1.60
Destroy/crush firearm	3 minutes	EPCIII	\$1.29
Update computer regarding destruction and file property card	5 minutes	ITC	\$1.60
Total Minutes	<u>111 minutes</u>		<u>\$57.95</u>
Employee Benefits			\$28.03
Overhead			\$25.04
<u>Total Cost</u>			<u>\$111.02</u>

5. - Deputy asks suspect if firearms are present and suspect refuses to relinquish firearms.

<u>Mandated Task</u>	<u>Duration</u>	<u>Position</u>	<u>Cost</u>
Inquiry of firearms	2 minutes	Deputy	\$1.52
Document inquiry on incident report	5 minutes	Deputy	\$3.80
Incident report approved	2 minutes	Sergeant	\$1.96
Total minutes:	<u>9 minutes</u>		<u>\$7.28</u>
Employee Benefits			\$3.52
Indirect Costs			\$3.15
<u>Total Costs:</u>			<u>\$13.95</u>

The claimant also proposes the following RRM for the one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)

<u>Mandated Task</u>	<u>Duration</u>	<u>Position</u>	<u>Cost</u>
Amend receipt	240 minutes	Deputy	\$182.40
Approve receipt	30 minutes	Sergeant	\$29.40

Approve receipt	30 minutes	Lieutenant	\$35.10
Convert receipt to OMNI	120 minutes	SIT	\$55.20
Total Minutes	<u>420 minutes</u>		<u>\$302.10</u>
Employee Benefits			\$146.13
Overhead			\$130.57
Subtotal Cost			<u>\$578.80</u>
Salary			\$609.58
Employee Benefits			\$294.85
Overhead			\$263.46
Subtotal Cost			<u>\$1,167.89</u>
<u>Grand Total Cost</u>			<u>\$1,746.69</u>

In the event a consensus RRM cannot be reached, the claimant proposes alternative time study language permitting claimants to time study the reimbursable activities.

Position of the Department of Finance

The Department of Finance opposes the RRM proposed by the claimant on the ground that the proposed activities go beyond the scope of the mandate. Finance further argues that the unit costs are not supported with sufficient data to be an RRM for all eligible claimants. Finance states that “[t]he data lacks the number of cases petitioned in court, costs of private attorney’s fees, and supporting information from other agencies.” Finance further states that it would consider an RRM for the domestic violence calls involving weapons, but actual costs should be used for the one-time activity of amending the weapons receipt. Finally, Finance states that it will “review submitted claims on an on-going basis and, in the interest of streamlining the claims process, may coordinate with the test claimant in the development of a reasonable reimbursement methodology.”

Discussion

Staff reviewed the claimant’s proposed parameters and guidelines and the comments received. The issues in dispute involve the scope of the reimbursable activities and whether the Commission should adopt claimant’s proposed RRM for claiming costs pursuant to Government Code section 17518.5. As described below, staff finds that the proposed RRM does not satisfy the requirements of Government Code section 17518.5 and includes activities that go beyond the scope of the mandate. Thus, staff recommends that the Commission not adopt claimant’s proposed language.

Reimbursable Activities and Proposed RRM

Section IV of the claimant’s proposed parameters and guidelines identifies the activities listed in the Statement of Decision as reimbursable, state-mandated activities. The claimant also proposed a reasonable reimbursement methodology (RRM) pursuant to

Government Code section 17518.5 based on five factual scenarios. (See Schedule A to claimant's proposed parameters and guidelines.) Under each scenario, the claimant proposes unit times and costs to perform "mandated tasks." The "mandated tasks" include the activities found by the Commission to be state-mandated and activities the claimant contends are the most reasonable methods of complying with the mandated activities pursuant to section 1183.1 of the Commission's regulations.

Government Code section 17557, subdivision (b), states that the Commission may adopt an RRM when adopting parameters and guidelines. Government Code section 17518.5, as amended by AB 1222 (Stats. 2007, ch. 329, eff. Jan. 1, 2008), defines an RRM to "mean a formula for reimbursing local agencies and school districts for costs mandated by the state ..." It requires that two elements be shown: (1) that the methodology considers the variation of costs among local agencies and school districts to implement the mandate, and (2) that the methodology reimburses local agencies or school districts for implementing the mandate in a "cost-efficient manner." (Gov. Code, § 17518.5, subd. (c).) The Commission's regulations, section 1183.13, subdivision (d), states that proposed reasonable reimbursement methodologies "shall include any documentation or assumption relied upon to develop the methodology."

Further, section 1183.1 of the Commission's regulations describes the content of parameters and guidelines. Pursuant to section 1183.1, subdivision (a)(4), the reimbursable activities shall consist of the activities approved by the Commission in the Statement of Decision as reimbursable state-mandated activities, and activities found to constitute the most reasonable methods of complying with the mandate. "The most reasonable methods of complying with the mandate" are those methods not specified in statute that are necessary to carry out the mandated program.

Staff finds that the proposed RRM does not satisfy the requirements of Government Code section 17518.5, is based on activities that go beyond the scope of the mandate, and is not supported by evidence in the record that the proposed activities are necessary to carry out the mandated program.

First, the claimant has submitted a Declaration from Deputy Ferrell to support the unit times and costs for the County of Los Angeles in the proposed RRM. However, there is no evidence in the record that the proposed RRM considers the variation of costs among local agencies to implement the mandate, and that the RRM reimburses local agencies for implementing the mandate in a "cost-efficient manner," as required by Government Code section 17518.5.

Moreover, several activities listed under the proposed scenarios supporting the unit times and costs go beyond the scope of the mandate and the Commission's Statement of Decision. For example, the claimant identifies "Booking" as a reimbursable activity in Scenarios 2, 3, and 4, and attaches 20 minutes to that activity. Activities involving the arrest and booking of a suspect are not mandated by the state. Arrest and booking

decisions are made at the local level and are, thus, not reimbursable.¹ The mandated program is limited to including information on the domestic violence incident report form regarding the presence of firearms or weapons at the scene, and taking temporary custody of firearms or weapons in plain sight or discovered pursuant to a consensual or other lawful search during a domestic violence incident, and the procedure for the return or disposal of the weapon.

Under claimant's Scenarios 2, 3, 4, and 5, firearms or other deadly weapons are present, seized, and either the firearm or weapon is released to the owner, held pending a court petition, or destroyed. The activities requested in these scenarios are overly broad and go beyond the scope of the mandate. The Commission, on pages 27-33 of the Statement of Decision, found that performing these activities mandated a new program or higher level of service *only when* the firearm or weapon is discovered during "any other lawful search." Page 27 of the Statement of Decision describes "any other lawful search" as follows:

The 2002 amendment to section 12028.5 (Stats. 2002, ch. 833, § 1.5) adds the following underlined text to subdivision (b):

[Law enforcement officers] shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search as necessary for the protection of the peace officer or other persons present.

Sponsored by the City of Santa Rosa, the legislative history of this amendment indicates that its purpose was "to add any "lawful" search to the existing "plain sight or consensual" search required in domestic violence circumstances for the mandated seizure of firearms and weapons." Adding "any lawful search" to the consensual or plain sight searches already in the statute means that firearm or weapon confiscation is now also required for searches incident to arrest, or of people the officer has legal cause to arrest, or searches pursuant to a warrant, or searches based on statements of persons who do not have authority to consent but have indicated to law enforcement that a weapon is present at the scene. (Footnotes omitted.)

Seizure of firearms or other deadly weapons found in plain sight or during consensual searches, and the activities that follow the seizure under these circumstances, were required by prior law and are not reimbursable here.²

In addition, the claimant's RRM does not contain a proposal for the reimbursement of the activities and costs required pursuant to Penal Code section 12028.5, subdivision (j). The

¹ See *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 880, where the court recognized that a state mandate occurs when "the state, rather than local officials, has made the decision requiring a school district to incur the costs ..."

² See Penal Code section 12028.5, subdivision (f), as last amended by Statutes 2001, chapter 254.

Commission found that when the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search, the following activities and costs are reimbursable, beginning January 1, 2003:

If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

Further, many of the activities identified in the claimant's scenarios are not supported by evidence in the record as to why these activities are necessary to carry out the mandated program, as required by section 1183.1 of the Commission's regulations. In many cases, it cannot be determined what the activity is – i.e., “prepare to transfer to CP&E;” “Enter info to DOJ/AFS;” “Convert the receipt to OMNI.”³

Finally, the proposed unit cost for Scenario 3 is ambiguous. The narrative of claimant's submittal identifies the total cost for Scenario 3 as \$411.31. However the proposed language in Schedule A for Scenario 3 identifies a “Grand Total Cost” of \$319.96. Moreover, the proposed unit cost for the one-time activity of amending the receipt for property appears to include reimbursement for salary, employee benefits and overhead twice.

Accordingly, staff recommends that the Commission not adopt claimant's proposed RRM and activities identified to support the RRM. Instead, staff recommends that the Commission adopt the attached draft proposed parameters and guidelines that contain the mandated activities identified in the Statement of Decision that can be claimed based on actual costs. Language is included in Section IV of the parameters and guidelines to allow claimants to use time studies to support salary and benefit costs when the activity is task-repetitive as follows:

Claimants may use time studies to support salary and benefit costs when the activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

This time study language has been recently adopted by the Commission in other parameters and guidelines.

Conclusion

Staff recommends that the Commission adopt the draft proposed parameters and guidelines, beginning on page 15.

³ Claimant's proposal appears to contain footnotes to define these terms, but the narrative of the definition is not included in the submittal.

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

DRAFT PROPOSED PARAMETERS AND GUIDELINES

Penal Code Sections 13730, Subdivision (c)(3), 12028.5;

Statutes 2001, Chapter 483, Statutes 2002, Chapter 833

Crime Victims' Domestic Violence Incident Reports II

02-TC-18

I. SUMMARY OF THE MANDATE

On September 27, 2007, the Commission adopted a Statement of Decision, finding that effective January 1, 2002, Penal Code section 13730, subdivision (c)(3) (Stats. 2001, ch. 483) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for local agencies, on all domestic violence-related calls for assistance:

- To include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon (Pen. Code, § 13730, subd. (c)(3)).

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission found that the activities listed below are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (2) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

- To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
- To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
- To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is

not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5.¹ (Pen. Code, § 12028.5, subd. (b).)

- To sell or destroy, as provided in subdivision (c) of Section 12028,² any firearm or other deadly weapon taken into custody and held for longer than 12 months and not recovered by the owner or person in lawful possession at the time it was taken into custody. Reimbursement for this activity is not required for firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5, subd. (e).)
- If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)
- To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)
- If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm

¹ Subdivision (f) of section 12028.5 authorizes, within 60 days of seizure, the law enforcement agency to initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned in cases “in which a law enforcement agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat.” This provision also requires notifying the owner.

² Section 12028, subdivision (c) requires specified weapons to be surrendered to law enforcement and authorizes disposal of them by sale at public auction or (in subd. (d)) by destruction.

or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)

- If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

Effective January 1, 2003, in accordance with Penal Code section 12028.5 (Stats. 2002, ch. 833) the Commission found that the following activities are a reimbursable state-mandated program within the meaning of article XIII B, section 6 and Government Code section 17514, for local agencies, when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search.

- The one-time activity of amending the receipt for a confiscated firearm or other deadly weapon to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
- If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

II. ELIGIBLE CLAIMANTS

Any county, city, or city and county.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 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 test claim for this mandate was filed by the test claimant, the County of Los Angeles, on April 2, 2003, establishing eligibility for reimbursement beginning July 1, 2001. However, Penal Code section 13730, subdivision (c)(3), as amended by Statutes 2001, chapter 483, became effective and operative on January 1, 2002. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 13730, subdivision (c)(3), are reimbursable on or after January 1, 2002. Penal Code section 12028.5, as amended by Statutes 2002, chapter 833, became operative and effective on January 1, 2003. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 12028.5 are reimbursable on or after January 1, 2003.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs

shall be submitted to the State Controller within 120 days 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.

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 given 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, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, 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 reported 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.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

For each eligible claimant, the following activities are eligible for reimbursement:

One-Time Activity

- A. *Beginning January 1, 2003*, the one-time activity of amending the receipt for a confiscated firearm or other deadly weapon taken at the scene of a domestic violence incident to include "the time limit for recovery as required" by section 12028.5. (Pen. Code, § 12028.5, subd. (b).)

Ongoing Activities

- A. *Beginning January 1, 2002*, for all domestic violence-related calls for assistance, the following activity is reimbursable:

Include on the domestic violence incident report form a notation of whether the officer or officers who responded to the domestic violence call found it necessary, for the protection of the peace officer or other persons present, to inquire of the victim, the alleged abuser, or both, whether a firearm or other deadly weapon was present at the

location, and, if there is an inquiry, whether that inquiry disclosed the presence of a firearm or other deadly weapon (Pen. Code, § 13730, subd. (c)(3).)

B. Beginning January 1, 2003, the following activities are reimbursable when firearms or other deadly weapons are discovered during any other lawful search at the scene of a domestic violence incident involving a threat to human life or a physical assault. Any other lawful search includes but is not limited to the following searches: (1) a search incident to arrest, or of people the officer has legal cause to arrest; (2) a search pursuant to a warrant; or (3) a search based on statements of persons who do not have authority to consent, but have indicated to law enforcement that a weapon is present at the scene.

1. To take temporary custody of any firearm or other deadly weapon when necessary for the protection of the peace officer or other persons present. (Pen. Code, § 12028.5, subd. (b).)
2. To give the owner or person in lawful possession of the firearm or other deadly weapon a receipt that describes the firearm or deadly weapon and lists any identification or serial number on the firearm, and indicates where the firearm or weapon can be recovered, the time limit for recovery, and the date after which the owner or possessor can recover it. (Pen. Code, § 12028.5, subd. (b).)
3. To make the firearm or other deadly weapon available to the owner or person who was in lawful possession 48 hours after seizure or as soon as possible, but no later than five business days following the seizure. Reimbursement for this activity is not required if either: (1) the firearm or other deadly weapon confiscated is retained for use as evidence related to criminal charges as a result of domestic violence incident; or (2) if the firearm or other deadly weapon is retained because it was illegally possessed, or (3) if the firearm or other deadly weapon is retained because of a court petition filed pursuant to subdivision (f) of section 12028.5. (Pen. Code, § 12028.5, subd. (b).)
4. To sell or destroy, as provided in subdivision (c) of Section 12028, any firearm or other deadly weapon taken into custody and held for longer than 12 months and not recovered by the owner or person in lawful possession at the time it was taken into custody. Reimbursement for this activity is not required for firearms or other deadly weapons not recovered within 12 months due to an extended hearing process as provided in subdivision (j) of section 12028.5. (Pen. Code, § 12028.5, subd. (e).)
5. If the local agency has reasonable cause to believe that the return of a firearm or other deadly weapon would be likely to result in endangering the victim or the person reporting the assault or threat, for the agency to advise the owner of the firearm or other deadly weapon, and within 60 days of the date of seizure (or 90 days if an extension is granted) initiate a petition in superior court to determine if the firearm or other deadly weapon should be returned. (Pen. Code, § 12028.5, subd. (f).)
6. To inform the owner or person who had lawful possession of the firearm or other deadly weapon, at that person's last known address by registered mail, return receipt requested, that he or she has 30 days from the date of receipt of the notice

to respond to the court clerk to confirm his or her desire for a hearing, and that the failure to respond shall result in a default order forfeiting the confiscated firearm or other deadly weapon. If the person whose firearm or other deadly weapon was seized does not reside at the last address provided to the local agency, for the agency to make a diligent, good faith effort to learn the whereabouts of the person and to comply with the notification requirements in subdivision (g) of section 12028.5. (Pen. Code, § 12028.5, subd. (g).)

7. If the owner or person who had lawful possession of the firearm or other deadly weapon requests a hearing, to show in court by a preponderance of evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (h).)
8. If the owner or person who had lawful possession of the firearm or other deadly weapon does not request a hearing or does not respond within 30 days of the receipt of notice, to file a petition in court for an order of default. (Pen. Code, § 12028.5, subd. (i).)

- C. *Beginning January 1, 2003*, the following activity is reimbursable when firearms or other deadly weapons are taken into temporary custody at the scene of a domestic violence incident involving a threat to human life or a physical assault, and the firearm or other deadly weapon is discovered in plain sight or pursuant to a consensual or other lawful search:

If the person who owns or had lawful possession of the firearm or other deadly weapon petitions the court for a second hearing within 12 months of the date of the initial hearing, showing by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat. If the court orders the firearm or other deadly weapon returned to the owner or person who had lawful possession, the local agency upon order of the court shall pay reasonable attorney's fees to the prevailing party. (Pen. Code, § 12028.5, subd. (j).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each 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 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 were 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.

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.

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 (1) the 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 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of 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 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect

shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (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 distributions 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 2 CFR Part 225, Appendix A and B (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 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate 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. RECORDS 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 chapter³ is subject to the initiation of an audit by the State 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. 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 REVENUES AND REIMBURSEMENTS

Any offsets 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

³ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

addition, reimbursement for this mandate received from any federal, state or non-local source 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)(A), 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 the 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 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 (a), 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.



Commission on State Mandates

Original List Date: 4/22/2003
Last Updated: 9/1/2009
List Print Date: 09/23/2009
Claim Number: 02-TC-18
Issue: Crime Victims' Domestic Violence Incident Reports

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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