

ITEM 17 F
FINAL STAFF ANALYSIS
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Penal Code Section 679.02, Subdivision (a)(12)

Statutes 1995, Chapters 411

Crime Victim's Rights
05-PGA-28 (CSM-96-358-01)

State Controller's Office, Requestor

EXECUTIVE SUMMARY

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Crime Victim's Rights* program (CSM-96-358-01) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

In 2003, upon recommendation from the Bureau of State Audits, direction from the Legislature, and an SCO request, the Commission adopted amendments to parameters and guidelines that clarified what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO. The adopted language, commonly referred to as "boilerplate language," has been included in all parameters and guidelines adopted since 2003. In addition, section 1183 of the Commission's regulations require parameters and guidelines to include instruction on claim preparation, notice of the SCO's authority to audit claims, and the amount of time documentation must be retained during the audit period.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language.

This analysis pertains only to the request to amend the *Crime Victim's Rights* program. The staff analyses for the other 48 programs will be presented separately.

There is one issue for the Commission's consideration:

- **Should the parameters and guidelines be amended to add the current "boilerplate language"?**

Staff finds that it is appropriate to approve the SCO's request to insert the source documentation and records retention language because it would conform the parameters and guidelines for the *Crime Victim's Rights* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations. Therefore, staff included the language requested by the SCO.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the SCO's proposed amendments to the parameters and guidelines for the *Crime Victim's Rights* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Requestor

State Controller's Office

Chronology

02/27/1997	Commission on State Mandates (Commission) adopts Statement of Decision
05/29/1997	Commission adopts parameters and guidelines
02/26/1998	Commission adopts statewide cost estimate
01/23/2003	The Commission, upon the recommendation of the Bureau of State Audits, direction from the Legislature, and upon request from the State Controller's Office (SCO), adopts amendments to the <i>School Bus Safety II</i> parameters and guidelines to include "boilerplate language" that details the documentation necessary to support reimbursement claims. After this date, all adopted parameters and guidelines contain this language
04/07/2006	SCO requests the parameters and guidelines for 49 mandated programs adopted prior to 2003 also be amended to include boilerplate language, including the <i>Crime Victim's Rights</i> program analyzed here
04/27/2006	Commission deems SCO's request for amendment of parameters and guidelines complete and issues for comment
07/23/2009	Commission reissues SCO's request for amendment of parameters and guidelines for comment
08/18/2009	Department of Finance files comments
10/13/2009	Commission issues draft staff analysis

Background

This is a request filed by the State Controller's Office (SCO) to amend the parameters and guidelines for the *Crime Victim's Rights* program (CSM-96-358-01) to add language regarding source documentation, and record retention requirements during the period a claim is subject to an audit. If the Commission on State Mandates (Commission) approves the SCO's request, the amendments would be effective for costs incurred beginning on July 1, 2005.

Test Claim Decision and Parameters and Guidelines

The County of Santa Clara filed a test claim on December 23, 1996 alleging that the test claim statutes require counties to notify victims of specified violent felonies, and other victims of felonies on their request, of pending pretrial dispositions.

The Commission approved this test claim on February 27, 1997, concluding that the test claim legislation imposed upon counties a reimbursable state mandate for the requirement for crime victim notification of pending pretrial dispositions.¹

On May 29, 1997, the Commission on State Mandates adopted the parameters and guidelines for this program.²

¹ Exhibit A.

² Exhibit B.

Boilerplate Language

On March 28, 2002, the Bureau of State Audits (BSA) issued an audit report on the *School Bus Safety II* program, stating that the parameters and guidelines do not impose sufficient requirements regarding the documentation required to support reimbursement claims, and thus, insufficient documentation was being submitted to support claims.³ The report recommended, among other things, that the Commission work with the SCO, other affected state agencies, and interested parties to make sure the language in the parameters and guidelines and the claiming instructions for the *School Bus Safety II* program reflects the Commission's intentions as well as the SCO's expectations regarding supporting documentation. On June 10, 2002, the SCO proposed that parameters and guidelines be amended to clarify what documentation is necessary to support reimbursement claims and what records must be retained to support audits initiated by the SCO.

Based on BSA's audit findings and recommendations, the Legislature enacted Statutes 2002, chapter 1167 (AB 2781) to direct the Commission to amend the parameters and guidelines in *School Bus Safety II*, to detail the documentation necessary to support reimbursement claims.

On January 23, 2003, upon recommendation from BSA, direction from the Legislature, and the SCO's request, the Commission adopted the following language regarding source documentation and records retention to the *School Bus Safety II* parameters and guidelines.⁴

IV. Reimbursable Activities

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify 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.

VI. Record Retention

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is*

³ Exhibit C.

⁴ The Commission also adopted other boilerplate language that is not relevant to this request.

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. 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.

The Commission has included this language, commonly referred to as “boilerplate language,” in all parameters and guidelines adopted on or after January 23, 2003.

SCO Request to Amend Parameters and Guidelines

On April 7, 2006, the SCO requested that the parameters and guidelines for 49 mandated programs that were adopted prior to 2003 be amended to also include the boilerplate language regarding source documentation and records retention that was adopted by the Commission in 2003.⁵

The parameters and guidelines for the *Crime Victim’s Rights* program is one of the 49 programs the SCO is requesting be amended.

Comments on the Proposal

On April 27, 2006, the Commission issued the SCO’s request to amend the parameters and guidelines for comment. No comments were filed. On July 23, 2009, the Commission reissued the proposal for comment. On August 18, 2009, Department of Finance submitted comments.⁶

In its comments, Finance stated it was neutral on the proposal, because the request to include boilerplate language in the parameters and guidelines for the 49 programs would allow the Controller to complete audit related tasks more efficiently, and provide the claimant with more information and record retention requirements, as well as the statute of limitations for audits.

Commission staff issued the draft staff analysis on October 13, 2009.⁷ No comments were filed.

Related Litigation (*Clovis Unified School Dist., et al. v. State Controller*)

This case involves a challenge by school districts and community college districts on reductions made by the State Controller’s Office to reimbursement claims for several mandated programs.⁸ The school districts argue that reductions made on the ground that school districts do not have contemporaneous source documents are invalid.

Trial Court Ruling. On January 2, 2009, the Sacramento County Superior Court (Case No. 06CS00748) issued a clarification of ruling and on February 19, 2009, issued a Judgment and Writ, finding that reductions made by the Controller on the ground that claimants did not have contemporaneous source documents supporting their reimbursement claims were invalid as an underground regulation *if* the contemporaneous source document requirement was not in the

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

⁵ Exhibit D.

⁶ Exhibit E.

⁷ Exhibit F.

⁸ The Commission is not a party to this action.

Commission's parameters and guidelines. The court held that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents to support their claim, absent statutory or regulatory authority to require contemporaneous source documents, or language in the parameters and guidelines requiring it. Pursuant to Government Code section 17558, the Controller's claiming instructions shall be derived from the test claim decision and the adopted parameters and guidelines. Thus, the court granted declaratory relief and a writ of mandate requiring the Controller to set aside the reduction and pay the school district plaintiffs the amounts reduced on two mandated programs that did not have parameters and guidelines language requiring claimants to maintain contemporaneous source documents.

Court of Appeal Filings (Third District Court of Appeal, Case No. C061696). Notices of appeal and cross-appeal have been filed by the SCO, the community college districts, and the school districts, and opening briefs have been filed. The appeal on the issue of the validity of the contemporaneous source documentation requirement remains pending.

Discussion

The proposed amendments to the parameters and guidelines raise the following issue for determination by the Commission:

Issue: Should the parameters and guidelines be amended to add the Commission's current "boilerplate language"?

In 2003, following recommendation from the BSA and direction from the Legislature, the SCO requested, and the Commission adopted amendments to parameters and guidelines that clarify what source documentation claimants are required to retain to support the claims they file to obtain reimbursement for mandated programs, and records retention language that identifies the records that must be retained to support an audit initiated by the SCO.

The adopted language, as detailed on pages 4 and 5 of this analysis, has been included in all parameters and guidelines adopted since 2003.

In addition, section 1183.1, subdivision (a) (5) and (6) require that the parameters and guidelines contain, among other things, the following:

- Claim preparation. Instruction on claim preparation, including instruction for direct and indirect cost reporting, or application of a reasonable reimbursement methodology.
- Record retention. Notice of the Office of the State Controller's authority to audit claims and the amount of time supporting documents must be retained during period subject to audit.

The SCO is now requesting that parameters and guidelines adopted prior to 2003 be amended to also include the source documentation and records retention language. This analysis pertains to the parameters and guidelines for the *Crime Victim's Rights* program.⁹

⁹ The SCO only requested that the portions of the boilerplate language regarding source documentation and records retention be added to the parameters and guidelines for the 49 programs. There are other sections of the boilerplate language regarding the remedies available before the Commission, and the legal and factual basis for the parameters and guidelines. Staff did not include these sections because the SCO did not request that they be included.

Inserting the source documentation and records retention boilerplate language would conform the parameters and guidelines for the *Crime Victim's Rights* program with the parameters and guidelines adopted for other programs, and is consistent with section 1183.1 of the Commission's regulations.

Therefore, staff finds that it is appropriate to approve the SCO's request, and made the following modifications to the parameters and guidelines:

IV. *Period of Reimbursement*

Government Code section 17557, subdivision (d) states that a parameters and guidelines amendment filed on or before the claiming deadline following a fiscal year, shall establish reimbursement eligibility for that fiscal year. This amendment was filed on April 7, 2006, (after the claiming deadline) establishing reimbursement for fiscal year 2005-2006. Therefore, reimbursement for this amendment shall begin on July 1, 2005.

Staff clarified that the proposed amendments would be effective on July 1, 2005.

V. *Reimbursable Costs*

Staff inserted the following boilerplate language regarding source documentation, as requested by the SCO:

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

VI. *Claim Preparation*

Staff removed the following source documentation language from the Employee Salaries and Benefits section, as requested by the SCO since it is being replaced by the source documentation language shown above under section IV. Reimbursable Costs.

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

Staff also removed the following source documentation language from the Services and Supplies section, as requested by the SCO since it is being replaced by the source documentation language shown above under section IV. Reimbursable Costs.

Source documents required to be maintained by the local agency may include, but are not limited to, invoices, lease documentation and other documents evidencing the validity of the expenditure.

And, staff removed the following source documentation language from the Fixed Assets section, as requested by the SCO because it is being replaced by the source documentation language shown above under section IV. Reimbursable Costs.

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

VII. Records Retention

At the request of the SCO, staff removed the existing language regarding records retention, and replaced it with the following boilerplate language regarding 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 chapter 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. 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.*

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed amendments to parameters and guidelines for the *Crime Victim's Rights* program, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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

Adopted: May 29, 1997

Proposed Amendment: January 29, 2010

Proposed Amendment to ~~Adopted~~ Parameters and Guidelines

Penal Code Section 679.02, Subdivision (a)(12)

Statutes 1995, Chapter 411, ~~Statutes of 1995~~

Crime Victim's Rights

05-PGA-28 (CSM-96-358-01)

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

I. Summary Of The Source Of The Mandates

Chapter 411, Statutes of 1995, which added Penal Code section 679.02, subdivision (a)(12).

II. Commission On State Mandates Decision

On February 27, 1997, the Commission determined that the requirements of Penal Code section 679.02, subdivision (a)(12), as added by Chapter 411, Statutes of 1995, required local agencies to implement a new program or higher level of service in an existing program within the meaning of section 6, Article XIII B of the California Constitution and Government Code section 17514, by requiring district attorneys to:

- Notify the victim of a violent felony, as defined in Penal Code section 667.5, or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition before a change of plea is entered before a judge, or if it is not possible to notify before the change of plea is entered before a judge, as soon as possible.
- On request of the victim, to notify the victim of any felony of a pending pretrial disposition, as specified.

III. Eligible Claimants

Any county or city and county.

IV. Period of Reimbursement

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

Government Code section 17557 states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The County of Santa Clara filed the test claim for this mandate on December 23, 1996.

Chapter 411, Statutes of 1995, became effective January 1, 1996. Accordingly, the period of reimbursement for activities required by Chapter 411/95 began January 1, 1996.

Actual costs for one year are to be included in each claim. Estimated costs for the subsequent fiscal year may be included on the same claim, if applicable. All claims for

reimbursement of costs shall be submitted within 120 days from the date on which the State Controller issues claiming instructions.

If 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. Reimbursable Costs

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 county or city and county shall be reimbursed for the costs to notify the victims of specified violent felonies, or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition, or to notify the victim of any felony of a pending pretrial disposition upon request of the victim.

B. Reimbursable Components

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

1. One-time Start-up Costs

Costs to develop, or update and adopt, internal policies and procedures to fulfill the requirements of Penal Code section 679.02, subdivision (a)(12), (A), (B), and (C).

2. On-going Costs - Victim Notification

Costs to notify, by any reasonable means available, the victim of a specified violent felony, or in the event of a homicide, the victim's next of kin, of a pending pretrial disposition, or to notify the victim of any felony of a pending pretrial

disposition upon the request of the victim (generally, this requirement can be accomplished with a form letter).

VI. Claim Preparation

Each claim for reimbursement pursuant to this mandate must be timely filed and provide documentation in support of the reimbursement claimed for this mandate.

Claim detail should include the following:

A. Employee Salaries and Benefits

Claimed reimbursement for employee costs should be supported by the employee's name, classification, productive hourly rate, fringe benefit amount, hours worked, and a brief description of the mandated functions performed. In lieu of actual time, the average time devoted to each mandated activity may be claimed if supported by a documented time study.

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

B. Services and Supplies

List the cost(s)/price(s) for materials, services, and supplies which have been purchased, leased, consumed or expended for the purpose of this mandate. Purchases made shall be claimed at the actual price after deducting for all cash discounts, rebates, and allowances received by the claimant.

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

C. Travel Expenses

Mileage, per diem, lodging, public carrier charges, and other employee travel costs are reimbursable in accordance with the rules of the local jurisdiction. Provide name(s) of traveler(s), purpose of travel, mode of travel, inclusive travel dates, destination point(s), and costs.

D. Contract Services

Contracted services costs are reimbursable to the extent that the function(s) performed requires special skills, knowledge, or staffing that is not readily available from claimant's staff. Provide the name(s) of contractor(s) who performed the services. Describe the functions performed by each contractor which relate to the mandate. Use of contract services must be justified by the claimant.

E. Fixed Assets

List the cost of fixed assets that have been acquired specifically for the purposes of this mandate. If a fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for purposes of the mandated program is reimbursable.

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

F. Allowable Overhead Costs

Local agencies have the option of using 10 percent of direct labor excluding fringe benefits as indirect costs or preparing a departmental Indirect Cost Rate Proposal. If the local agency elects to prepare an Indirect Cost Rate Proposal, the Proposal must be prepared in accordance with the Office of Management and Budget Circular A-87 (OMB A-87) or subsequent update. If more than one department is claiming indirect costs for the mandated program, each department must have its own indirect cost rate proposal.

VII. Record Retention Supporting Data

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

~~For auditing purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs. All documentation in support of claimed costs shall be made available to the State Controller or his/her agent, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).~~

~~Government Code section 17558.5, subdivision (a) states that a reimbursement claim for actual costs is subject to audit by the Controller up to two years after the end of the calendar year in which the reimbursement claim is filed or last amended, unless no funds are appropriated for the program for the fiscal year for which the claim is made, in which case the audit period shall commence to run from the date of initial payment of the claim.~~

VIII. Offsetting Savings And Other Reimbursement

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., service fees collected, federal funds, other state funds, etc.) shall be identified and deducted from this claim.

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

IX. 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 therein.