

**ITEM 8**  
**FINAL STAFF ANALYSIS**  
**PROPOSED AMENDMENT TOPARAMETERS AND GUIDELINES**  
**AS MODIFIED BY STAFF**

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

Statutes 1995, Chapter 411

*Crime Victim's Rights*

09-PGA-04 (05-PGA-28, CSM-96-358-01)

Department of Finance, Requestor

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**EXECUTIVE SUMMARY**

This is a request filed by the Department of Finance to amend the parameters and guidelines for the *Crime Victim's Rights* program to end reimbursement for the program.

On February 27, 1997, the Commission approved a test claim, concluding that Penal Code section 679.02 imposed a reimbursable state mandate upon counties by requiring district attorneys to notify felony victims of a pending pretrial disposition before a change of plea is entered before a judge; and on request of the victim, to notify the victim of any felony of a pending pretrial disposition, as specified.

On July 28, 2009, a budget trailer bill (Stats. 2009-2010, 4<sup>th</sup> Ex.Sess., ch. 12 (AB 12), § 28, eff. July 28, 2009) amended Penal Code section 679.02. The amendment deleted the state-mandated activities imposed on district attorneys and added new language referring to the victim notification requirements of section 28 of Article I of the California Constitution, the voter-approved initiative, Victims' Bill of Rights Act of 2008: Marsy's Law. The Commission does not have jurisdiction over the new language.

On June 16, 2010, the Department of Finance requested that the parameters and guidelines for the *Crime Victims' Rights* program be amended to end the reimbursement period on the effective date of the budget trailer bill.

Staff agrees with the Department of Finance that the budget trailer bill repealed the state-mandated activities imposed on county district attorneys, effective July 28, 2009. However, staff finds that the parameters and guidelines should be amended to end reimbursement for this program on July 27, 2009, the last day that the state-mandated activities were imposed on county district attorneys.

The draft staff analysis and proposed parameters and guidelines amendment were issued on June 22, 2010, and comments were filed by the Department of Finance on July 13, 2010. Finance concurred with the recommendations of the draft staff analysis to adopt the proposed amendments to the parameters and guidelines, as modified by Commission staff.

On July 16, 2010, the State Controller's Office submitted comments on the draft staff analysis, requesting that language be added to clarify that since the *Crime Victims Rights* program was

suspended for fiscal year 2009-2010, the State Controller will not issue claiming instructions for the program for the 2009-2010 fiscal year.

Staff recommends that the SCO's recommended changes be denied for the following reasons:

1. The Budget Act of 2009, enacted in the Third Extraordinary Session on February 20, 2009, did not suspend any local agency mandates; but as revised during the Fourth Extraordinary Session, suspended the *Crime Victim's Rights* program, effective July 28, 2009. Thus, staff finds that claimants are eligible for reimbursement for the period from July 1 through July 27, 2009, as stated in the proposed amendment to parameters and guidelines, previously issued by staff.
2. The Controller's duty to issue revised claiming instructions arises from Government Code section 17558, subdivision (c). If the Commission amends the parameters and guidelines and transmits them to the SCO, there is a duty for the SCO to issue revised claiming instructions so claimants may claim reimbursement for costs incurred during the period July 1-27, 2009. Staff finds that there is no legal basis for the Commission to supersede Government Code section 17558, subdivision (c) by including the language proposed by the SCO.

### **Staff Recommendation**

Staff recommends that the Commission:

- Adopt the Department of Finance's proposed amendment to the parameters and guidelines, as modified by staff, beginning on page 9.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

## STAFF ANALYSIS

### Requestor

Department of Finance

### 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
07/28/2009	Budget trailer bill (Stats. 2009-2010, 4 <sup>th</sup> Ex.Sess., ch. 12, eff. July 28, 2009.) amends test claim statute
01/29/2010	Commission amends parameters and guidelines to revise the boilerplate language
06/18/2010	Department of Finance requests parameters and guidelines amendment
06/22/2010	Commission issues draft staff analysis and proposed amendment to parameters and guidelines
07/13/2010	Department of Finance files comments
07/16/2010	State Controller's Office files comments

### Background

This is a request filed by the Department of Finance to amend the parameters and guidelines for the *Crime Victim's Rights* program (05-PGA-28, CSM-96-358-01) to end the reimbursement period on July 28, 2009.

#### 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 statute requires county district attorneys 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,<sup>1</sup> concluding that Penal Code section 679.02, subdivision (a)(12) and (12)(A) imposed a reimbursable state mandate on counties by requiring district attorneys to notify felony victims as follows:

- 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.

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<sup>1</sup> Exhibit A.

On May 29, 1997, the Commission adopted the parameters and guidelines for this program.<sup>2</sup> On January 29, 2010, the Commission amended the parameters and guidelines to revise the boilerplate language.<sup>3</sup>

In 2009, a budget trailer bill (Stats. 2009-2010, 4<sup>th</sup> Ex.Sess., ch. 12 (AB 12), § 28, eff. July 28, 2009) repealed the original victim notification requirements of the *Crime Victim's Rights* program. The statute was amended, as follows:

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

~~To be notified by the district attorney's office where the case involves a violent felony, as defined in subdivision (c) of Section 667.5, or in the event of a homicide, the victim's next of kin, of a pending~~ For the victim, upon request, to be notified of any pretrial disposition before a change of plea is entered before a judge of the case, to the extent required by Section 28, Article I of the California Constitution.

(A) ~~A victim of any felony may request to be notified, by the district attorney's office,~~ of a pretrial disposition.

On June 16, 2010, the Department of Finance requested that the parameters and guidelines for the *Crime Victim's Rights* program be amended to end the reimbursement period on July 28, 2009, the effective date of the budget trailer bill.<sup>4</sup>

The draft staff analysis and proposed parameters and guidelines amendment were issued on June 22, 2010.<sup>5</sup> Comments were filed by the Department of Finance on July 13, 2010.<sup>6</sup> Comments were filed by the State Controller's Office on July 16, 2010.<sup>7</sup> The comments will be discussed below.

## Discussion

The 2009 budget trailer bill (Stats. 2009-2010, 4<sup>th</sup> Ex.Sess., ch. 12 (AB4X 12)) amended Penal Code section 679.02, subdivision (a)(12) and (12)(A) to remove state-mandated requirements imposed on district attorneys, and to refer to the victim notification requirements of section 28 of Article I of the California Constitution, the voter-approved initiative, Victims' Bill of Rights Act of 2008: Marsy's Law.

Staff issued a draft staff analysis finding that the budget trailer bill repealed the state-mandated activities imposed on county district attorneys, effective July 28, 2009. However, staff finds that the parameters and guidelines should be amended to end reimbursement for this program on July 27, 2009, the last day that the state-mandated activities were imposed on county district attorneys.

Therefore, staff concludes that the following amendments (strike-out for deletions; and underlined text for additions) should be made to Section IV, of the parameters and guidelines, to

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<sup>2</sup> Exhibit B.

<sup>3</sup> Exhibit C.

<sup>4</sup> Exhibit D.

<sup>5</sup> Exhibit E.

<sup>6</sup> Exhibit F.

<sup>7</sup> Exhibit G.

cap the period of reimbursement on July 27, 2009, to delete text that is irrelevant or incorrect, and to state that claimants may file reimbursement claims for the period July 1, 2009 through July 27, 2009 on February 15, 2011.

#### IV. Period of Reimbursement

Statutes 2009-2010, 4<sup>th</sup> Extraordinary Session, chapter 12 (Assem. Bill No. 12 (ABX4 12)), effective July 28, 2009, repealed the state-mandated activities that imposed a reimbursable state mandate on county district attorneys. Therefore, reimbursement for this program ends on July 27, 2009.

~~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 for the period July 1, 2009 through July 27, 2009 shall be submitted within 120 days from the date on which the State Controller issues revised claiming instructions, or by February 15, 2011.~~

~~If total costs for a given fiscal year do not exceed \$1000 \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.~~

#### Department of Finance Comments

Finance filed comments concurring with the recommendations of the draft staff analysis to adopt the proposed amendments to the parameters and guidelines, as modified by Commission staff, and to authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

#### State Controller's Office Comments

The SCO proposes a correction to the chronology in the staff analysis. Staff made the correction in the final staff analysis.

The SCO also proposes the following language for the parameters and guidelines:

#### IV. Period of Reimbursement

~~Actual costs for one year are to be included in each claim. All claims for reimbursement of costs for the period July 1, 2009 through July 27, 2009 shall be submitted within 120 days from the date on which the State Controller issues revised claiming instructions or by February 15, 2011.~~

The Budget Act of 2009, Chapter 1, Statutes of 2009, pursuant to the provisions of Section 17581 of the Government code, item 8885-295-0001 – Crime Victims Rights program has been suspended for fiscal year 2009/10. Therefore, the State Controller's Office will not issue claiming instructions for this program for the 2009/10 fiscal year.

Staff recommends that the Commission deny the SCO's proposed amendment to Section IV. Period of Reimbursement, for the following reasons:

Government Code section 17581 provides as follows:

- (a) No local agency shall be required to implement or give effect to any statute or executive order, or portion thereof, during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:
  - (1) The statute or executive order, or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.
  - (2) The statute or executive order, or portion thereof, or the commission's test claim number has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements. ...

The Budget Act of 2009, enacted in the Third Extraordinary Session on February 20, 2009, did not suspend any local agency mandates; but as revised during the Fourth Extraordinary Session, suspended the *Crime Victim's Rights* program, effective July 28, 2009.

Thus, staff finds that claimants are eligible for reimbursement for the period from July 1 through July 27, 2009, as stated in the proposed amendment to parameters and guidelines, previously issued by staff.

The SCO also requests adding language that the Controller will not issue claiming instructions for this program for the 2009-2010 fiscal year. The Controller's duty to issue revised claiming instructions arises from Government Code section 17558, subdivision (c), which states:

- (b) The Controller shall, within 60 days after receiving amended parameters and guidelines ... from the commission or other information necessitating a revision of the claiming instructions, prepare and issue revised claiming instructions for mandates that require state reimbursement that have been established by commission action pursuant to Section 17557 ....

If the Commission amends the parameters and guidelines and transmits them to the SCO, there is a duty for the SCO to issue revised claiming instructions so claimants may claim reimbursement for costs incurred during the period July 1-27, 2009.

Staff finds that there is no legal basis for the Commission to supersede Government Code section 17558, subdivision (c) by including the language proposed by the SCO. Thus, staff recommends denial of the SCO request.

## **Staff Recommendation**

Staff recommends that the Commission:

- Adopt the Department of Finance's proposed amendment to the parameters and guidelines, as modified by staff, beginning on page 7.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.





Adopted: 5/29/97  
Amended: 1/29/10  
[Proposed Amendment: 7/29/10](#)

## **Proposed Amendment to Parameters and Guidelines**

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

Statutes 1995, Chapter 411

*Crime Victim's Rights*

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

The January 29, 2010 amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement

Reimbursement for this program ends on July 27, 2009

### **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**

[Statutes 2009-2010, 4<sup>th</sup> Extraordinary Session, chapter 12 \(Assem. Bill No. 12 \(ABX4 12\)\), effective July 28, 2009, repealed the state-mandated activities that imposed a reimbursable state mandate on county district attorneys. Therefore, reimbursement for this program ends on July 27, 2009.](#)

The January 29, 2010 amendment is effective beginning with claims filed for the July 1, 2005 through June 30, 2006 period of reimbursement.

~~This amendment is effective beginning with claims filed for the July 1, 2006 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 for the period July 1, 2009 through July 27, 2009 shall be submitted within 120 days from the date on which the State Controller issues revised claiming instructions, or by February 15, 2011.

If total costs for a given fiscal year do not exceed \$1000 ~~\$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.

**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.

**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.

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**

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<sup>1</sup> 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.

**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.

**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.

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