BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES: Penal Code Sections 11165.9, 11166,11166.2, 11166.9,[1] 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916 California Code of Regulations, Title 11, Section 903 (Register 98, No. 29)[2] "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91) Period of reimbursement begins July 1, 1999, or later for specified activities added by subsequent statutes. Reimbursement ends for specified activities on January 1, 2012.	Case No.: 00-TC-22 *Interagency Child Abuse and Neglect Investigation Reports* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted December 6, 2013*) (*Served December 16, 2013*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on December 6, 2013.

[1] Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

[2] The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

Ed Jewik appeared on behalf of the claimant, the County of Los Angeles. Michael Byrne and Kathleen Lynch appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the parameters and guidelines and statement of decision by a vote of 7-0.

I. SUMMARY OF THE MANDATE

These proposed parameters and guidelines pertain to the *Interagency Child Abuse and Neglect Investigation Reports* (ICAN) test claim, 00-TC-22, adopted December 6, 2007. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 1999, or later for specified activities added by subsequent statutes. Some of the activities end as of January 1, 2012, due to a subsequent change in law.

The test claim addresses amendments to the Child Abuse and Neglect Reporting Act (CANRA). The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The Commission found that Penal Code sections 11165.9, 11166, 11166.2, 11166.9, 11168 (formerly 11161.7), 11169, and 11170, as added or amended by Statutes 1977, chapter 958, Statutes 1980, chapter 1071, Statutes 1981, chapter 435, Statutes 1982, chapters 162 and 905, Statutes 1984, chapters 1423 and 1613, Statutes 1985, chapter 1598, Statutes 1986, chapters 1289 and 1496, Statutes 1987, chapters 82, 531 and 1459, Statutes 1988, chapters 269, 1497 and 1580, Statutes 1989, chapter 153, Statutes 1990, chapters 650, 1330, 1363 and 1603, Statutes 1992, chapters 163, 459 and 1338, Statutes 1993, chapters 219 and 510, Statutes 1996, chapters 1080 and 1081, Statutes 1997, chapters 842, 843 and 844, Statutes 1999, chapters 475 and 1012, and Statutes 2000, chapter 916; and executive orders California Code of Regulations, title 11, section 903 as added by Register 98, No. 29, and "Child Abuse Investigation Report" Form SS 8583, mandate new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for cities and counties for the following specific new activities:

Distributing the Suspected Child Abuse Report Form:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)[3]

[3] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, as amended by Statutes 1977, chapter 958.

Reporting Between Local Departments

Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)[4]

Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

A county probation department shall:

- Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (h), now subd. (j).)[5]
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)[6]

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[4] As added by Statutes 2000, chapter 916, operative January 1, 2001.

[5] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[6] *Ibid.*

A county welfare department shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

  This activity does not include making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay." (Pen. Code, § 11166, subd. (h), now subd. (j).)[7]

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under this subdivision.

  As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (h), now subd. (j).)[8]

Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

A city or county law enforcement agency shall:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)[9]

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[7] *Ibid.*

[8] *Ibid.*

[9] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)[10]

- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

  As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166, subd. (i), now subd. (k).)[11]

Receipt of Cross-Reports by District Attorney's Office:

A district attorney's office shall:

- Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2, subdivision (b). (Pen. Code, § 11166, subds. (h) and (i), now subds. (j) and (k).)[12]

Reporting to Licensing Agencies:

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the

[10] *Ibid.*

[11] *Ibid.*

[12] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours. (Pen. Code, § 11166.2.)[13]

Additional Cross-Reporting in Cases of Child Death:

A city or county law enforcement agency shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)[14]

A county welfare department shall:

- Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)[15]
- Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)[16]
- Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect. (Pen. Code, § 11166.9, subd. (l), now § 11174.34, subd. (l).)[17]

Investigation of Suspected Child Abuse, and Reporting to and from the State Department of Justice

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the

[13] As added by Statutes 1985, chapter 1598 and amended by Statutes 1987, chapter 531; Statutes 1988, chapter 269; Statutes 1990, chapter 650; and Statutes 2000, chapter 916.

[14] As amended by Statutes 1999, chapter 1012, operative January 1, 2000. This code section has since been renumbered as Penal Code section 11174.34, without amendment, by Statutes 2004, chapter 842.

[15] *Ibid.*

[16] *Ibid.*

[17] *Ibid.*

state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.) [18]

- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.) [19]

Notifications Following Reports to the Child Abuse Central Index

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:

- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)[20]
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)[21]

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[18] Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Regulation as added by Register 98, No. 29.

[19] *Ibid.*

[20] As amended by Statutes 1997, chapter 842, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. The potential reimbursement period for this activity begins no earlier than January 1, 2001—the operative date of Statutes 2000, chapter 916.

[21] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 162, Statutes 1984, chapter 1613, Statutes 1985, chapter 1598, Statutes 1986, chapter 1496, Statutes 1987, chapter 82, Statutes 1989, chapter 153, Statutes 1990, chapters 1330 and 1363, Statutes 1992, chapters 163 and 1338, Statutes 1993, chapter 219, Statutes 1996,

- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)[22]

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)[23]

Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).) [24]

Any city or county law enforcement agency, county probation department, or county welfare department shall:

- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

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chapter 1081, Statutes 1997, chapters 842, 843, and 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916.

[22] *Ibid.*

[23] As amended by Statutes 1997, chapter 844, Statutes 1999, chapter 475, and Statutes 2000, chapter 916. This subdivision was renumbered by Statutes 2004, chapter 842.

[24] *Ibid.*

Record Retention

Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).)[25]

A county welfare department shall:

- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, § 11169, subd. (c).) [26]

The Commission found that requirements imposed on individuals, termed "mandated reporters," are not unique to government, but rather are generally applicable to all persons described in the statute. Mandated reporters, including physicians, teachers, social workers, law enforcement personnel, and members of a number of other professions, are required to report to "an agency specified in section 11165.9," whenever the mandated reporter knows or reasonably suspects that a child has been the victim of abuse or severe neglect.[27] These requirements are imposed upon individuals by virtue of their vocation and professional training, irrespective of whether they are employed by local government. Therefore, as discussed in the test claim statement of decision, those requirements do not constitute a state-mandated new program or higher level of service.[28] Additionally, some duties found in the test claim statutes are not new, or are otherwise excluded from reimbursement, pursuant to the Commission's findings in the test claim statement of

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[25] As amended by Statutes 1997, chapter 842.

[26] *Ibid.*

[27] Penal Code section 11166(a) (Added by Stats. 1980, ch. 1071. Amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, ch. 269; Stats. 1988, ch. 1580; Stats. 1990, ch. 1603 (SB2669); Stats. 1992, ch. 459 (SB1695); Stats. 1993, ch. 510 (SB665); Stats. 1996, ch. 1080 (AB295); Stats. 1996, ch. 1081 (AB3354); Stats. 2000, ch. 916 (AB1241); Stats. 2001, ch. 133 (AB102); Stats. 2002, ch. 936 (AB299); Stats. 2004, ch. 823 (AB20); Stats. 2004, ch. 842 (SB1313); Stats. 2005, ch. 42 (AB299); Stats. 2005, ch. 713 (AB776); Stats. 2006, ch. 701 (AB525); Stats. 2007, ch. 393 (AB673); Stats. 2010, ch. 123 (AB2380); Stats. 2012, ch. 728 (SB71); Stats. 2012, ch. 517 (AB1713); Stats. 2012, ch. 521 (AB1817)).

[28] See *County of Los Angeles v. State* (1987) 43 Cal.3d 46, at p. 56.

decision. Furthermore, maintaining the Child Abuse Central Index (CACI), and other duties imposed upon the Department of Justice, are not reimbursable activities because they affect state government, rather than local government.

But the duties imposed on city and county law enforcement agencies, county welfare departments, and county probation departments, where authorized, to receive reports from mandated reporters of suspected child abuse; to refer those reports to the correct agency when the recipient agency lacks jurisdiction; to cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices; to report to licensing agencies; to make additional reports in the case of a child's death from abuse or neglect; to distribute the standardized forms to mandated reporters; to investigate reports of suspected child abuse to determine whether to report to the Department of Justice; to notify suspected abusers of listing in the Child Abuse Central Index; and to retain records, as specified, *are* unique to local government, and were determined to constitute a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution. A small number of activities were also approved for county licensing agencies and district attorneys' offices, as provided.

II. PROCEDURAL HISTORY

The test claim was filed on June 29, 2001, by the County of Los Angeles (claimant), and was partially approved by the Commission on December 6, 2007, by a vote of 7 to 0.[29]

The adopted statement of decision was issued December 19, 2007, with instructions for the claimant to file proposed parameters and guidelines within 30 days. The claimant submitted proposed parameters and guidelines on January 14, 2008. On December 2, 2008, the claimant requested a prehearing conference on the draft parameters and guidelines. Pursuant to the prehearing on December 11, 2008, the parties agreed that they would develop a reasonable reimbursement methodology (RRM) and submit the proposal to the Commission by April 1, 2009. On March 10, 2009, the claimant submitted a request for a second prehearing. Pursuant to the second prehearing, Commission staff issued proposed schedules for the parties resulting in a tentative hearing date between September 2009 and January 2010. When the claimant failed to submit the proposed RRMs for addition to the parameters and guidelines within the proposed schedules, Commission staff warned, in a letter dated August 19, 2009, that "if a proposed reimbursement methodology is not submitted by September 1, 2009," the Commission would proceed in adopting an actual cost parameters and guidelines at the December 2009 hearing. The claimant requested a third prehearing, which was set for October 29, 2009. At the third prehearing, it was determined that the initial proposed parameters and guidelines did not describe the reimbursable activities consistently with the surveys that were being circulated to evaluate costs and form the proposed unit rate RRMs. As a result, the claimant submitted revised proposed parameters and guidelines, on January 28, 2010, attempting to describe the reimbursable activities more in line with the information requested in the surveys.

On March 11, 2010, the Department of Social Services (CDSS) requested an extension of time to file comments on the revised proposed parameters and guidelines. On March 12, 2010, the State Controller's Office (SCO) requested an extension of time to file comments on the revised proposed parameters and guidelines. On March 18, 2010, CDSS submitted written comments on

[29] Exhibit A, Test Claim Statement of Decision, at pp. 1-2; 21-38.

the revised proposed parameters and guidelines.[30] On March 30, 2010 the Department of Finance (DOF) submitted written comments on the revised proposed parameters and guidelines.[31] On April 1, 2010, SCO submitted written comments on the revised proposed parameters and guidelines.[32] On May 18, 2010, the claimant submitted rebuttal comments and a second revised proposed parameters and guidelines.[33]

On March 12, 2013, Commission staff issued a draft proposed statement of decision and parameters and guidelines.[34] On March 20, 2013, the claimant requested an extension of time to file comments, from April 2, 2013 to May 2, 2013, and a postponement of the hearing date from April 19, 2013 to May 24, 2013. The request for extension and postponement was granted for good cause. On March 27, 2013 the SCO filed comments on the draft proposed statement of decision and parameters and guidelines.[35] On April 17, 2013, the claimant filed comments on the draft proposed statement of decision and parameters and guidelines.[36] On April 19, 2013, DOF filed a request for extension and postponement, which was granted for good cause on April 22, 2013, extending time to file comments until June 7, 2013, and setting the matter for hearing on July 26, 2013.

On June 7, 2013, DOF submitted comments on the draft proposed statement of decision, suggesting that Proposition 30, adopted by the voters in 2012, might have an impact on the Commission's findings regarding costs mandated by the state.[37] On June 10, 2013, CDSS submitted comments on the draft proposed statement of decision, requesting that the Commission consider the potential impact of Proposition 30 and the 2011 Realignment legislation.[38]

On June 14, 2013, Commission staff issued a request for comments and additional briefing addressing the 2011 Realignment Legislation and Proposition 30, and the possible impacts on existing public safety-related mandates, such as the *ICAN* program.[39] On July 8, 2013, DOF

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[30] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines.

[31] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines.

[32] Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines.

[33] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines.

[34] Exhibit I, Draft Staff Analysis and Proposed Parameters and Guidelines.

[35] Exhibit J, SCO Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[36] Exhibit K, Claimant Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[37] Exhibit L, DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[38] Exhibit M, CDSS Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[39] Exhibit N, Commission Request for Comments on New Substantive Issue.

requested an extension of time to file comments and postponement of the hearing to the December 6, 2013 hearing, which was granted for good cause.[40] The parties and interested parties submitted comments in response to Commission staff's request on September 3 and 5, 2013.[41, 42,43]

III. POSITION OF THE PARTIES

A. Claimant's Position and Proposed Parameters and Guidelines

The claimant's revised proposed parameters and guidelines offered a combination of actual cost reimbursement for some activities and standard times-based RRMs for others. In response to agency comments, the claimant submitted rebuttal comments and a *second revised* proposed parameters and guidelines, which introduced a "streamlined three-tiered classification of required investigations,"[44] but otherwise made no changes to the prior revised proposed parameters and guidelines. For that reason, both the revised proposed parameters and guidelines and the second revised proposed parameters and guidelines are analyzed below.

The claimant proposes actual cost reimbursement for most activities expressly approved in the statement of decision, and most activities alleged to be reasonably necessary to complete those activities, including a number of case-specific investigative activities and costs, such as polygraph testing, DNA testing, medical examinations, and other evidence-gathering activities. In addition, the claimant proposes standard time RRMs for the following repetitive activities:

- For law enforcement to complete an investigation of suspected child abuse to determine whether a report is unfounded, substantiated or inconclusive: multiple standard time RRMs are proposed by the claimant based upon the level of investigation required in each case;[45] and
- For county welfare departments to complete certain reports and comply with specified notice requirements.[46]

The activities proposed for reimbursement by the claimant are based on declarations in the record detailing the procedures that Los Angeles County Sheriff's Department employs to investigate reports of suspected child abuse. The standard times were developed on the basis of survey information collected from Los Angeles County Sheriff's Department personnel, and

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[40] Exhibit O, DOF Request for Extension and Postponement.

[41] Exhibit P, CSAC Response to Commission Request for Comments.

[42] Exhibit Q, County of LA Response to Commission Request for Comments.

[43] Exhibit R, DOF Response to Commission Request for Comments.

[44] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 6.

[45] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 14-18.

[46] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 27.

provide reimbursement for repetitive activities conducted by law enforcement agencies when inquiring into reports of suspected child abuse. Standard time RRMs are proposed for three levels of investigations, based on the progress of the investigation, Level 1 being the lowest level.

In cases in which the report is facially inaccurate, or where a preliminary investigation results in a finding that no abuse has occurred, standard times are proposed for the recordkeeping and investigative activities necessary to receive and track the report, and to decide not to forward the report to DOJ; these cases are described as levels 1 and 2, and include receiving and reviewing the initial report, and, where necessary, tasking a patrol officer to conduct interviews and preliminary investigation, concluding with closure of the case, which includes supervisory review.[47] Cases in which some evidence is adduced that necessitates further investigation are categorized as level 3 investigations. Level 3 includes follow-up interviews conducted by a "Child abuse investigator," conducting a background check on the suspect(s), conferring with social services, and writing additional reports, including the CACI report required for DOJ.[48] The claimant proposes applying one of the standard times to each category of case, as reported by each eligible claimant, and multiplying the standard times by the hourly pay rates for each law enforcement agency.

The standard times RRMs proposed for county welfare agencies to prepare and submit certain reports and satisfy certain notice requirements were developed on the basis of information from CDSS detailing the procedures required of individual county welfare agencies, and surveys of eligible agencies in Los Angeles County taken to determine how much time is spent on each activity. The standard times are proposed for the completion of the Child Abuse Summary Report form, the Suspected Child Abuse Report form, the Notice of Child Abuse Central Index Listing form, filing copies of the forms, and responding to Department of Justice requests. The standard times are proposed to be applied to the number of these activities completed, multiplied by the hourly pay rates for eligible county welfare departments. The proposed RRMs are silent regarding reimbursement for probation departments that may perform some of the activities proposed for the RRMs.

In response to the draft proposed statement of decision issued March 12, 2013, the claimant submitted rebuttal comments and declarations in support. The claimant continues to stress that the scope of investigation for which reimbursement is required includes regulations put in place by DOJ *after the test claim decision*, which require a full investigation, including gathering and preserving evidence. The claimant argues that these activities should therefore be reimbursable. In the additional declarations submitted by the claimant, each declarant expressed a belief that *all investigative activities and steps necessary to complete an investigation* must be reimbursed.[49] In addition, the claimant continues to argue for reimbursement for annual training of "ICAN

[47] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 15-16.

[48] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 17.

[49] Exhibit K, Claimant's Comments on Draft Proposed Parameters and Guidelines.

staff" and reimbursement for developing and updating software and computer systems to track and process child abuse reports.[50]

In response to Commission staff's request for comments on the realignment issue, the claimant argued that "the ICAN statutes are not funded by the 2011 Realignment Legislation" and therefore article XIII, section 36 had no effect on mandate reimbursement for the ICAN activities.[51]

B. CDSS Position

CDSS urges the Commission to reject claimant's proposed parameters and guidelines, including the proposed law enforcement RRM, "because the activities described in it are not related to or required by CANRA." CDSS argues at length that CANRA does not give rise to any affirmative duty to investigate child abuse, and that in any event the investigative activities called for in the claimant's revised proposed parameters and guidelines reach deep into the realm of criminal investigative activities. CDSS argues that local law enforcement has a responsibility to investigate suspected child abuse, but that responsibility is not grounded in the provisions of CANRA. CDSS does not discuss the county welfare standard times and the activities involved in its comments, addressing only the activities and proposed standard times for law enforcement.[52]

On June 10, 2013, CDSS filed comments on the draft staff analysis, in which CDSS concludes that the draft parameters and guidelines "appear appropriate and reasonable, and the California Department of Social Services supports them." With respect to offsetting revenues, CDSS asserts that counties receive "significant state funding for the activities of social workers," and that a 1991-1992 realignment of Child Welfare Services Programs (AB 948) constitutes a potential offset. CDSS also declares that "[w]e also would expect the Commission to consider the implications of the [2011] realignment agreements' statutory and constitutional changes in any reimbursable cost estimates beyond 2011."[53]

C. DOF Position

DOF opposes the adoption of the claimant's revised proposed parameters and guidelines on the ground that "the proposed RRM inappropriately includes the totality of its law enforcement response to reports of child abuse, and all activities leading up to a full criminal prosecution." DOF argues that "the activities in levels 3, 4, and 5 are not requirements of CANRA but a more extensive investigation needed for the criminal justice system to apprehend and prosecute a criminal and therefore should not be reimbursable." DOF urges instead that "only those activities directly related to an investigation conducted to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, should be reimbursable."[54]

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[50] *Ibid.*

[51] Exhibit Q, Claimant's Response to Commission Request for Comments.

[52] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 1.

[53] Exhibit M, CDSS Comments on Draft Proposed Parameters and Guidelines.

[54] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 1.

On June 7, 2013, DOF submitted comments on the draft proposed parameters and guidelines, stating, "[g]enerally we have no concerns with the reimbursable activities as they appear to be consistent with the statement of decision." However, DOF did suggest that the 2011 realignment would impact not only the scope of costs mandated by the state, but the extent to which the activities themselves are mandated.[55]

DOF responded to Commission staff's request for comments on the realignment issue, concluding, "[a]fter deliberating the questions, as well as the ICAN activities[,]" that "the approved activities under the ICAN statutes are reimbursable under the law."[56] DOF stated that it "does not believe that the 2011 Realignment Legislation shifted complete or partial funding responsibility from the state to local government," and therefore article XIII, section 36 is not applicable to the ICAN activities.[57]

D. SCO Position

The SCO states that "the activities specified in Section IV B [Reimbursable Activities] do not clearly identify the mandated activities in the Statement of Decision adopted by the Commission on December 19, 2007." SCO requests that the activities to which the standard time RRMs will apply be correlated to the reimbursable activities specified in the statement of decision. SCO also suggests that the activities should be segregated between one-time and on-going activities. And, SCO recommends that only an RRM rate or actual cost methodology be applied to each activity, not "a combination of actual cost and or standard cost methodologies," as proposed in the claimant's revised proposed parameters and guidelines.[58] On March 27, 2013, the SCO submitted comments on the draft proposed statement of decision, in which it recommended "no changes."[59]

IV. COMMISSION FINDINGS

Commission staff has reviewed the claimant's proposed parameters and guidelines and comments received. Non-substantive, technical changes, for purposes of clarification, consistency, and conformity to the statement of decision and statutory language have been made, and are not addressed in this analysis. The following analysis addresses only substantive changes to the activities approved in the statement of decision, and to the claimant's proposed parameters and guidelines, and incorporates changes to the parameters and guidelines proposed by the parties, where appropriate. The analysis also addresses whether the evidence in the record supports the adoption of the proposed RRMs.

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[55] Exhibit L, DOF Comments on Draft Proposed Parameters and Guidelines.

[56] Exhibit R, DOF Response to Commission Request for Comments, at pp. 1-2.

[57] *Ibid.*

[58] Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at pp. 1-2.

[59] Exhibit J, SCO Comments on Draft Proposed Statement of Decision.

A. Substantive Changes in Law Affecting the Period of Reimbursement for Some Activities (Section III. of Proposed Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on June 29, 2001, establishing eligibility for reimbursement for the 1999-2000 fiscal year. Therefore, costs incurred on or after July 1, 1999 are reimbursable under this test claim, for statutes in effect before July 1, 1999, or later, as specified, for statutes effective after July 1, 1999.

Here, the period of reimbursement must also take account of the subsequent amendments made to the test claim statutes that ended, or limited, some of the reimbursable activities. Statutes 2011, chapter 468 (AB 717) amended Penal Code section 11169 to provide, in pertinent part:

> (a) An agency specified in Section 11165.9 shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect that is *determined to be substantiated*, other than cases coming within subdivision (b) of Section 11165.2. An agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is *substantiated*, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be not substantiated, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. An agency specified in Section 11165.9 receiving a written report from another agency specified in Section 11165.9 shall not send that report to the Department of Justice.
>
> (b) On and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 shall no longer forward to the Department of Justice a report in writing of any case it investigates of known or suspected child abuse or severe neglect.
>
> (c) At the time an agency specified in Section 11165.9 forwards a report in writing to the Department of Justice pursuant to subdivision (a), the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI).The notice required by this section shall be in a form approved by the Department of Justice. The requirements of this subdivision shall apply with respect to reports forwarded to the department on or after the date on which this subdivision becomes operative.[60]

Prior to the 2011 amendment, this section required agencies specified in section 11165.9[61] to forward to DOJ, after investigation, reports of suspected child abuse or neglect that were

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[60] Penal Code section 11169 (Stats. 2011, ch. 468 (AB 717)) [emphasis added].

[61] Penal Code section 11165.9 lists the agencies to which the remaining sections of the Child Abuse and Neglect Reporting Act apply: city and county police and sheriff's departments, except school district police or security departments; county welfare departments; and county probation

determined to be "not unfounded."[62] By changing the requirement from those cases that were "not unfounded," to only those that are "substantiated," the amended section now excludes an "inconclusive" case, meaning that forwarding to DOJ "inconclusive" reports of suspected child abuse or neglect is no longer reimbursable as of the effective date of the amendment, January 1, 2012.[63]

The new section also provides that law enforcement agencies "shall no longer" forward reports of suspected child abuse to DOJ, even if those reports are substantiated. Therefore, for law enforcement agencies only, reimbursement for forwarding reports of suspected child abuse to DOJ is no longer mandated as of January 1, 2012. This change was intended, in part, to provide cost savings to the state by limiting the mandate, including ending reimbursement for all law enforcement investigations required to satisfy the reporting requirements.[64] However, AB 717 did not change any other statutory or common law requirements imposed upon police officers, as mandated reporters, to investigate child abuse pursuant to Penal Code section 11166. The Commission, in its statement of decision on the test claim, specifically found that section 11166 did not impose a reimbursable mandate on local government since the duty of a mandated reporter is not unique to government.[65] Therefore, beginning January 1, 2012, for law enforcement only, the activity of investigating child abuse, for purposes of preparing the report to DOJ, is no longer a reimbursable activity.

Note also that subdivision (c) requires that "At the time an agency specified in Section 11165.9 forwards a report [to DOJ]…the agency shall also notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index (CACI)." Because this notice requirement is triggered by the report forwarded to DOJ, and law enforcement agencies are no longer required to forward reports to DOJ pursuant to section 11169(b), law enforcement agencies are also no longer are required to notify the suspected child abuser that he or she has been listed in CACI, at the time a report is forwarded. And, because

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departments where designated by the county to receive reports of suspected child abuse from mandated reporters. (Stats. 2000, ch. 916).

[62] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Code of Regulations, Title 11, section 903 (Register 98, No. 29); "Child Abuse Investigation Report" Form SS 8583.

[63] Penal Code section 11169 (As amended by Stats. 2011, ch. 468 (AB 717)).

[64] See Exhibit X, AB 717 Senate Committee Analysis ["By deleting the requirement to report inconclusive reports, as well as limiting CACI reporting agencies to child welfare and probation departments, the provisions of this bill will result in future state-reimbursable cost savings due to reduced mandated reporting workload on local reporting agencies"].

[65] See e.g. *Alejo v. City of Alhambra*, 75 Cal.App.4th 1180, addressing the duty of a law enforcement officer, as a mandated reporter, to investigate alleged child abuse reported to the officer; see also 11165.14, addressing the duty of law enforcement to investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse against a pupil at a schoolsite. However, these investigative requirements have not been found to impose reimbursable state-mandated programs.

only "substantiated" reports, rather than all reports that are "not unfounded" are now required to be forwarded to DOJ, the requirement for other agencies subject to the mandate to inform the suspected child abuser of the listing in the CACI will arise with diminished frequency. However, a number of other notice requirements approved in the test claim statement of decision remain unaffected by the amendments made by Statutes 2011, chapter 468. The remaining activities relating to notice requirements approved by the Commission arise from section 11170, and are unaffected by the substantive amendments to the test claim statutes; the code section from which these activities arise was not substantively altered by Statutes 2011, chapter 468. Furthermore, these activities are triggered by events other than the initial listing in the CACI or initial forwarding of a report to DOJ, which were substantively altered by Statutes 2011, chapter 468. The remaining notice requirements are therefore included in the parameters and guidelines without further analysis.

Based on the foregoing analysis and discussion, the language of Section III, Period of Reimbursement, reflects the ending of certain activities, as of January 1, 2012. Additionally, for purposes of clarity, activities that are ended by subsequent amendments are specified in Section IV, Reimbursable Activities.

B. Reimbursable Activities (Section IV. of Proposed Parameters and Guidelines)

The majority of reimbursable activities included in the parameters and guidelines are drawn directly from the test claim statement of decision, and are approved without substantial analysis. However, for purposes of clarity and consistency, the parameters and guidelines provide, consistent with Penal Code section 11165.9, that "city and county law enforcement agencies" and "city or county police or sheriff's departments" are used interchangeably throughout the test claim statutes, and this analysis, and are not distinct entities subject to the mandate, as might be inferred from the test claim statement of decision. Additionally, for purposes of clarity and consistency, activities relating to obtaining the original investigative report and drawing independent conclusions, and retaining records of suspected child abuse reports, will be analyzed briefly. And finally, the scope of the activities approved in the test claim statement of decision pertaining to investigations and forwarding reports to DOJ is analyzed at length.

One-Time Activities: Developing Policies and Procedures to Implement the Mandate, Including Due Process Procedures

Government Code section 17557 provides that "[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program."[66] The Commission's regulations provide that parameters and guidelines shall include "a description of 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 or executive order that are necessary to carry out the mandated program."[67] The claimant has proposed the following reasonably necessary activities:

[66] Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).

[67] Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

1) *Annually, update Departmental policies and procedures necessary to comply with ICAN's requirements.*

2) *Periodically, meet and confer with State and local agencies in coordinating ICAN cross-reporting and collaborative efforts.*

3) *Annually, train ICAN staff in State Department of Justices' [DOJ] ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate participants and instructors for their time in participating in an annual training session and to provide necessary facilities, training materials and audio visual presentations.*

4) *Periodically, to develop, update or obtain computer software and obtain equipment necessary for ICAN cross-reporting and reporting to DOJ.*

5) *Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary finding. Reimbursement is provided for the costs of tests and evaluations on suspects as well as victims. Victim costs include those incurred for medical exams for sexual assault and/or physical abuse, mental health exams, and, where the victim dies, for autopsies. Suspect costs include those incurred for DNA and polygraph testing. Also included, when reasonably necessary to make an evidentiary finding are the costs of video-taping interviews of victims and suspects.*

6) *Due process costs incurred by law enforcement and county welfare agencies to develop and maintain ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI].*[68]

SCO recommended, in its comments, that the proposed reasonably necessary activities "be delineated between One-time and Ongoing Activities." The Commission agrees; identification of one-time and ongoing activities is a necessary and usual convention of parameters and guidelines, and the parameters and guidelines for this mandated program therefore include such delineation.

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence. The Commission's regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs," and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice "in the manner and of such information as is described in Government Code section 11515." Therefore the reasonably necessary activities proposed must be supported by substantial evidence in order to withstand judicial review, and that evidence must include something other than hearsay evidence.

[68] See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at p. 25.

With respect to activity 1), above, SCO suggested that "Annually updating Departmental policies and procedures," as proposed, should be only reimbursable as a one-time activity. SCO therefore recommended striking the word "annually" above, and instead approving one-time reimbursement to "[d]evelop and establish policies and procedures necessary to comply with ICAN's requirements."[69] DOF, similarly, suggested striking the word "annually" and approving only a one-time reimbursement to "[u]pdate Departmental policies and procedures to comply with ICAN requirements."[70]

The claimant has submitted excerpts from the Los Angeles County Sheriff's Department Child Abuse Protocol, suggesting that the department developed a written policy for child abuse investigations. The claimant has not submitted evidence directly explaining why policy updates are necessary, but it is reasonable to assume, in this limited context, that in implementing the test claim statutes some policies and procedures required updating. Accordingly, the Commission has frequently approved similar policy and procedure updates as a reasonably necessary activity.

However, there is no evidence that compliance with ICAN requirements necessitates *annual* updates to departmental policies and procedures. Since the enactment of the test claim statute in Statutes 2000, chapter 916, very few substantive changes have been made that pertain to the mandated activities approved in the test claim statement of decision, and the claimant has not made any showing that changes to the ICAN requirements are frequent enough or substantial enough to warrant *annual updates* to policies and procedures.[71]

Accordingly, the Commission finds that only a one-time update of policies and procedures for the ongoing activities approved by the Commission is reasonably necessary to carry out the mandate. Reimbursement for a one-time update of policies and procedures is reflected in the parameters and guidelines.

With respect to items 2) through 5), above, the claimant did not submit evidence with its proposed parameters and guidelines to establish that the proposed activities are reasonably necessary to comply with the mandate; only unsupported assertions of necessity are found in the record.[72] Because there was no evidence in the record to support these items, Commission staff recommended in the draft staff analysis that items 2) through 5) be denied.[73] In response to the draft staff analysis, the claimant submitted comments which provide some evidence that some of the activities described in items 3) through 5) might be reasonably necessary to comply with the mandate.

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[69] Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

[70] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 2.

[71] See, e.g., Statutes 2011, chapter 468 (AB 717), amending Penal Code section 11169 to provide that only substantiated reports must be forwarded to the DOJ, and not "inconclusive" reports; and to provide that as of January 1, 2012, law enforcement agencies no longer are required to forward reports of suspected child abuse to DOJ.

[72] Exhibit B, Revised Proposed Parameters and Guidelines, at pp. 20-21; 26.

[73] Exhibit I, Draft Staff Analysis and Proposed Parameters and Guidelines, at p. 27.

With respect to item 3), proposing annual training of "ICAN staff," the claimant submitted the declaration of Sergeant Daniel Scott, which states that "it is my information and belief that specialized training is necessary to ensure that ICAN's comprehensive child abuse referral assessments, investigations and reports are completed in a timely manner and in accordance with DOJ's requirements." Sergeant Scott further expressed a belief that ICAN training should be performed annually, so that "new ICAN staff can be promptly trained and deployed."[74] In addition, the claimant noted SCO's Comments in April 2010, in which it was recommended that one-time activities include training "in State Department of Justice (DOJ) ICAN requirements."[75] The Commission notes that both DOF and SCO expressed their agreement with the Commission's draft proposed parameters and guidelines, absent any provision for training.[76] However, the Commission has often provided for training with respect to past mandates, and the cross-reporting duties of local agencies, as well as the receipt of mandated reports and forwarding completed reports to DOJ, all may necessitate some amount of training. Therefore, the Commission finds that the recommendation of ICAN training one time per employee required to implement ICAN activities is reasonably necessary to comply with the mandate.

With respect to item 4), "Periodically, to develop, update or obtain computer software and obtain equipment necessary for ICAN cross-reporting and reporting to DOJ," the claimant has submitted the declaration of John E. Langstaff, "a Children Services Administrator II with the Los Angeles County Department of Children and Family Services (DFCS)." Mr. Langstaff declares that "it is his information and belief that ICAN cross-reporting allows written reports transmission by 'fax or electronic transmission' and that electronic transmission includes transmission using computers and specialized software."[77] Mr. Langstaff further declares that fax machines are not reliable, and that the E-SCARS system in Los Angeles County "also has a database to track or produce reports regarding transmission, receipt of the SCAR, agency personnel assigned to investigate, agency findings, comments, report numbers…and many more features." Therefore, Mr. Langstaff declares "that it is my information and belief that ICAN cross-reporting reimbursements should include those for computerized systems which are reasonably necessary in providing child abuse referrals and reports in a timely, reliable, and cost-efficient manner."[78] The Commission notes that in the SCO's comments on the claimant's revised proposed parameters and guidelines, the SCO did not suggest eliminating computer equipment and software entirely, but rather seemed inclined to allow reimbursement to "[d]evelop or procure computer software and equipment necessary for ICAN cross-reporting and reporting to DOJ," with the caveat that such costs be prorated to include "only the costs related to the mandate."[79] The cross-reporting requirements (section 11166), and the requirements to report to DOJ (section 11169) permit, but do not require, electronic transmission. Section 11166

[74] Exhibit K, Claimant Comments on Draft Staff Analysis, at pp. 40-41.

[75] See Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

[76] See Exhibit J, SCO Comments on Draft Proposed Parameters and Guidelines; Exhibit L, DOF Comments on Draft Proposed Parameters and Guidelines.

[77] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 18.

[78] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 51.

[79] See Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

requires cross-reporting by phone, fax, *or* electronic transmission, and section 11169 provides for reporting to DOJ "in a form approved by the Department of Justice and *may be sent by fax or electronic transmission.*" Electronic transmission is an option available, and according to the County of Los Angeles a more reliable option, but it is not required. Moreover, the current form SS (or BCIA) 8583 is available from the DOJ's website in "pdf" format with electronic fields that can be filled and printed, or sent via email.[80] The Commission takes official notice that no specialized software or computer systems are required to access and utilize these forms.[81] Therefore, developing or obtaining software or specialized computer systems is not reasonably necessary to comply with the mandate. Finally, as the declaration of Mr. Langstaff indicates, the software utilized by the County of Los Angeles has many additional features that are not required to comply with the mandate, including, for example, tracking agency personnel assigned to investigate and District Attorney staff assigned, and indexing court case numbers.[82] The County's chosen method to implement the mandate exceeds the mandate, based on the description given by Mr. Langstaff. Therefore, the Commission finds that item 4) is not reasonably necessary to implement the mandate.[83]

With respect to item 5), "Testing and evaluation costs that are incurred when reasonably necessary to make an evidentiary finding," the claimant continues to stress that tests and evaluations, and other types of evidence-gathering, are required to complete an "active investigation." The claimant relies in part on the definition of "active investigation" in Code of Regulations, title 11, section 901, which was amended after the test claim was filed, and which the Commission found, in the test claim decision, did not impose any mandated activities or costs.[84] The claimant asserts, mistakenly, that section 901 was approved for reimbursement.[85] The claimant also points to the SCO's comments on the Revised Proposed Parameters and Guidelines, in which the SCO recommended reimbursement to "gather and evaluate evidence when reasonably necessary to make evidentiary findings on suspects and victims…"[86] However,

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[80] Exhibit X, Form BCIA 8583 (Revised 03/08).

[81] Code of Regulations, title 2, section 1187.5 ["Official notice may be taken in the manner and of such information as is described in Government Code Section 11515."]; Government Code section 11515 (Stats. 1945, ch. 867) ["In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State."]; Evidence Code section 451(f) (Stats. 1986, ch. 248) ["Judicial notice shall be taken of the following: ¶…¶ Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute."].

[82] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 50.

[83] The claimant proposes adding language regarding computer software and equipment to each of the ongoing cross-reporting activities approved in the test claim statement of decision. Based on the above analysis, that language is denied here, and will not be further addressed below.

[84] Exhibit A, Test Claim Statement of Decision, at p. 29. See also, Exhibit X, Excerpt from Test Claim 00-TC-22 and Exhibits including section 901.

[85] Exhibit K, Claimant Comments on Draft Staff Analysis, at pp. 3; 9-10.

[86] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 15.

the activity of investigating child abuse, as approved in the test claim decision, requires an investigation sufficient "to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state 'Child Abuse Investigation Report' Form SS 8583…to the Department of Justice." This issue is further explored below, in the discussion of the scope of investigation, but for purposes of "gathering and preserving evidence" or "testing and evaluation costs" it is sufficient to note that the scope of investigation required by the mandate is only *that which is necessary to determine whether to forward the report to DOJ*, which requires a finding only whether the report is "unfounded," "inconclusive," or "substantiated," and does not compel reimbursement of any additional steps that local agencies would reasonably take to gather evidence for a criminal prosecution. As discussed below, the scope of investigation necessary to comply with the mandate is limited to the finding of whether a report of suspected child abuse is unfounded, inconclusive, or substantiated; the gathering of physical evidence or conducting forensic tests is begun to prove allegations, not to establish whether a report is unfounded. Therefore, the Commission finds that item 5) is not necessary to implement the mandated program.

The provision of due process, and related activities and costs, are examined more fully below, but the one-time activity of developing due process procedures is approved here.

Based on the foregoing, the Commission finds that item 1) to develop policies and procedures to implement the mandate; item 3) to provide ICAN training one time to each employee required to comply with the mandate; and item 6) to develop policies and procedures to provide due process, are approved as follows:

1. Policies and Procedures

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

a. *Update Departmental policies and procedures necessary to comply with the reimbursable activities identified in IV B. (One-time costs only.)*

b. *Develop ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI]. (One-time costs only)*

2. Training

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

Develop and implement training for ICAN staff to implement State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors for their time in participating in training sessions and to provide necessary facilities, training materials and audio visual presentations. (One time per employee whose job responsibilities involve ICAN mandated activities)

Ongoing Activities

1. Distributing the Suspected Child Abuse Report Form

The Commission approved reimbursement in the test claim statement of decision for a city or county police or sheriff's department, county probation department, as specified, or county welfare department, to distribute the child abuse reporting forms adopted by DOJ to mandated reporters.[87] This activity is sufficiently clear from the plain language of the test claim finding, and is therefore approved without further analysis.

2. Reporting Between Local Departments

The Commission approved requirements in the test claim statement of decision for local agencies to receive and refer child abuse reports, and to promptly cross-report suspected child abuse among county welfare, county probation departments, local law enforcement, and the district attorney, as specified.[88] These activities were all sufficiently clear based on the language of the test claim findings, and were therefore taken directly from the test claim statement of decision and included in the proposed parameters and guidelines without substantial analysis.[89]

3. Reporting to the State Department of Justice

The most significant disputed issue in these parameters and guidelines is the proper scope of reimbursable activities relating to investigating reports of suspected child abuse and forwarding reports that have merit, as specified, to DOJ. The test claim statement of decision approved reimbursement for law enforcement agencies, county probation departments, or county welfare departments, to complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting Form SS 8583 to DOJ; and to forward a report in writing of every case the agency investigates that is not unfounded.[90]

The claimant first requested reimbursement for *the full course of investigative activities* that law enforcement agencies undertake in cases of suspected child abuse or severe neglect.[91] The claimant later submitted rebuttal comments and a second revised proposed parameters and guidelines, in which the claimant reevaluated its reimbursable activities, in an attempt to present a "streamlined three-tiered classification of required investigations."[92] The second revised proposed parameters and guidelines request reimbursement for the following activities:

> *Level 1: No Child Abuse Based on Preliminary Information (Suspected Child Abuse Report (SCAR) or Call-for-Service)*

[87] Exhibit A, Test Claim Statement of Decision, at p. 41.

[88] Exhibit A, Test Claim Statement of Decision, at pp. 41-44.

[89] See Proposed Parameters and Guidelines, at pp. 4-8.

[90] Exhibit A, Test Claim Statement of Decision, at p. 45.

[91] Exhibit B, Revised Proposed Parameters and Guidelines, at pp. 23-24.

[92] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines.

1. *Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.*
2. *Officer processes child abuse report into agency's tracking system.*
3. *Officer reviews report and determines based on SCAR or call-for-service that no further investigation is required.*
4. *Officer's findings are entered into agency's system*
5. *Supervising officer reviews investigation findings and approves closure of report indicating no child abuse.*

Level 2: Patrol Officer Investigation, No Child Abuse

1. *Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.*
2. *Officer processes child abuse report into agency's tracking system.*
3. *Officer reviews report and assigns for appropriate follow-up investigation.*
4. *Patrol officer receives call-for-service and acknowledges call.*
5. *Patrol officer conducts preliminary interview with child/children.*
6. *Patrol officer conducts preliminary interviews with parents, siblings, witnesses, and/or suspect(s).*
7. *Patrol officer enters findings into agency's systems (ends call in computer aided system and documents findings).*
8. *Supervising officer reviews investigation findings and approves closure of the report indicating no child abuse.*

Level 3: Reported CACI Investigation

1. *Officer receives, prints or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters.*
2. *Officer processes child abuse report into agency's tracking system.*
3. *Officer reviews report and assigns for appropriate follow-up investigation.*
4. *Patrol officer receives call-for-service and acknowledges call.*
5. *Patrol officer conducts preliminary interview with child/children.*
6. *Patrol officer conducts preliminary interviews with parents, siblings, witnesses, and/or suspect(s).*
7. *Patrol officer enters findings into agency's systems (ends call in computer aided system, writes report, enters evidence).*

8. *Supervising officer reviews investigation findings and approves report indicating child abuse is suspected.*
9. *Secretary distributes, processes report.*
10. *Child abuse investigator reviews child abuse report.*
11. *Child abuse investigator conducts suspect background check.*
12. *Child abuse investigator confers with social services.*
13. *Child abuse investigator interviews child/children.*
14. *Child abuse investigator interviews witnesses.*
15. *Child abuse investigator interviews suspect(s).*
16. *Child abuse investigator writes additional reports.*
17. *Supervisor approves reports.*
18. *Secretary process final files and reports.*
19. *Child abuse investigator completes DOJ/CACI form.*
20. *Child abuse investigator completes advisement form to suspect(s).*[93]

In addition, the claimant requests actual cost reimbursement for the following activities that are deemed non-repetitive, and are alleged to be "reasonably necessary in certain cases:"

i. *Medical Exam – Sexual Assault*
ii. *Medical Exam – Physical Abuse*
iii. *Polygraph*
iv. *Collect, Store, and Review Evidence*
v. *Obtain Search Warrant*
vi. *Mental Health Examination*
vii. *Autopsies*
viii. *DNA Testing*
ix. *Video Taping Interviews (Victim or Suspect)*[94]

The claimant has also proposed reimbursement for repetitive activities of county welfare departments, some of which are expressly approved elsewhere in this analysis, and some of which were not supported by evidence that they are reasonably necessary to perform the activities approved in the test claim statement of decision. The county welfare activities are analyzed at Part 7., below.

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[93] *Ibid.*

[94] Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 18.

The following analysis will demonstrate that reimbursement is not required for the *full course of investigative activities* performed by law enforcement agencies, but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ. The analysis will show that the mandate to report to DOJ applies equally to all agencies subject to the mandate, and that therefore law enforcement should not be reimbursed for activities that go beyond what is required for all child protective agencies. The analysis herein concludes, therefore, that law enforcement activities 1-8, above are reimbursable under the mandate, ending with a supervisor's review of the investigative findings and approval of either the closure of the report (a finding of no child abuse) or a report indicating that child abuse is suspected (a substantiated or inconclusive finding). In addition, the analysis below recognizes that activity 19, completing the CACI form (also referred to as the "Child Abuse Summary Report [SS 8583] form), is expressly approved in the test claim decision as a part of forwarding the report to DOJ. Activity 20, providing notice to the suspected abuser, is addressed in Part 4., below. The analysis in this section will conclude also that the non-repetitive activities above are not supported in the record and go beyond the scope of the mandate; these are activities to gather evidence for a criminal investigation, and therefore would be performed only after a determination has been made that the report is "not unfounded." In addition, the Level 3 Investigation, as described by the claimant, is one that results in a report to CACI; therefore the activities in excess of a Level 2 Investigation are necessarily implicated only in the case that the report of suspected child abuse is "not unfounded." The analysis will also show that subsequent legislation *excludes* law enforcement's duty to report to DOJ regarding child abuse, and thereby limits reimbursement for investigative activities for law enforcement agencies to the period prior to the amendment; and, subsequent legislation has limited the mandate for all other agencies subject to the mandate to report to DOJ only reports of child abuse that are *substantiated, and no longer all reports that are "not unfounded*."

a. <u>The test claim statement of decision approved an investigation sufficient to determine whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, in order to prepare and submit the Child Abuse Investigation Report Form SS 8583, or subsequent designated form to the Department of Justice.</u>

The test claim statement of decision approved the following:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department shall:*
>
> - *Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice. (Pen. Code, §*

11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.) [95]

- *Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)* [96]

The plain language of the approved reimbursable activities in the test claim statement of decision provides for a police or sheriff's department, county probation department, or county welfare department to (1) complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, as defined; and (2) forward to DOJ a report in writing of every case that the local agency investigates which is determined to be substantiated or inconclusive. As explained throughout the analysis below, the determination whether a report must be forwarded to DOJ constitutes the upper bound of the scope of the mandate to investigate child abuse.

b. <u>Penal Code section 11169(a), and Code of Regulations, title 11, section 903, as approved in the test claim statement of decision, require an agency receiving mandated reports to complete an investigation to determine whether a report or known or suspected child abuse must be forwarded to DOJ, and to obtain enough information to complete the report.</u>

The approved activities pertaining to investigation and forwarding reports arise primarily from Penal Code section 11169(a), which states the following:

> A child protective agency shall forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse which is determined not to be unfounded, other than cases coming within subdivision (b) of Section 11165.2. A child protective agency shall not forward a report to the Department of Justice unless it has conducted an active investigation and determined that the report is not unfounded, as defined in Section 11165.12. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact and shall not retain the report. The report required by this section shall be in a form approved by the

[95] Code section as added by Statutes 1980, chapter 1071, amended by Statutes 1981, chapter 435, Statutes 1985, chapter 1598, Statutes 1988, chapters 269 and 1497, Statutes 1997, chapter 842, and Statutes 2000, chapter 916. Register 98, Number 29.

[96] *Ibid.*

> Department of Justice. A child protective agency receiving a written report from another child protective agency shall not send that report to the Department of Justice.[97]

Code of Regulations, title 11, section 903, as approved in the test claim statement of decision, provided that:

> All information items on the standard report form SS 8583 should be completed by the investigating [child protective agency]. Certain information items on the SS 8583 must be completed by the CPA in order for it to be considered a "retainable report" by DOJ and entered into [the index]. Reports without these items will be returned to the contributor. These information items are:
>
> (1) The complete name of the investigating agency and type of agency.
>
> (2) The agency's report number or case name.
>
> (3) The action taken by the investigating agency.
>
> (4) The specific type of abuse.
>
> (5) The victim(s) name, birth date or approximate age, and gender.
>
> (6) Either the suspect(s) name or the notation "unknown."[98]

Other information on the form 8583, which "should be completed," according to section 903, included the name of the investigating party, the date of the incident and the location, the address and relationship of suspect(s), and the present location of the victim, among other items.[99]

The Commission approved, in the test claim statement of decision, the completion of an investigation "to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive… for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583." The Commission based its finding on Penal Code section 11169; Code of Regulations, title 11, section 903 (Register 98, No. 29); and Form SS 8583.[100] The Commission found that the mandate *only requires enough information to determine whether to file a Form 8583*, or subsequent designated form, and enough information to render the Form 8583 a "retainable report," under section 903.[101]

In comments filed on the draft proposed statement of decision, the claimant continues to assert that the Commission approved an "active investigation," which the claimant defines by reference

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[97] Penal Code section 11169 (Stats. 2000, ch. 916).

[98] Code of Regulations, title 11, section 903 (Register 98, No. 29). The regulations pled in the test claim have been subsequently amended, but the Commission does not here take jurisdiction of the amended regulations that were not pled in the test claim.

[99] Exhibit X, Form SS 8583 (Revised 3/91).

[100] The version of Form 8583 included in the test claim exhibits was last revised 3/91.

[101] Penal Code section 11169 (Stats. 2000, ch. 916); Code of Regulations, title 11, section 903 (Register 98, No. 29).

to section 901 of the DOJ regulations. The claimant asserts that Form 8583 and section 901 require:

> " . . . at a minimum: assessing the nature and seriousness of the known or suspected abuse; conducting interviews of the victim(s) and any known suspect(s) and witness(es) when appropriate and/or available; gathering and preserving evidence; determining whether the incident is substantiated, inconclusive, or unfounded; and preparing a report that will be retained in the files of the investigating agency."

The claimant provides a copy of Form 8583 and of section 901 of title 11 in the exhibits attached to the claimant's comments. However, the version of form 8583 that was approved in the test claim statement of decision requires a substantially lesser degree of detail than that cited by the claimant; the form and the instructions have been amended by subsequent regulations, which are not subject to analysis at this time.[102]

Furthermore, the claimant states that section 901 "was included in the County's test claim legislation and found to impose reimbursable 'costs mandated by the State' upon local governmental agencies by the Commission."[103] The claimant is mistaken; the version of section 901 pled and analyzed in the test claim (Register 98, Number 29) contained no such definition.[104] Rather, version of section 901 that claimant cites to is a result of a 2005 amendment to the regulation, which was never pled and was not the subject of this or any other test claim. *Only section 903* was approved in the test claim: "[t]he Commission finds that California Code of Regulations, title 11, sections 901 or 902, do not require any activities that are not otherwise described in statute, and thus do not mandate a new program or higher level of service."[105]

Therefore, the investigation approved in the test claim statement of decision is only that required to comply with section 11169 and to complete the Form 8583, as those authorities existed at the time of the test claim decision. Any additional activities or costs allegedly mandated by later adopted executive orders, not pled in the original test claim would require a new test claim decision. Furthermore, the requirements of section 901 of the regulations may not be analyzed as a reasonably necessary activity; section 901 as it then read was denied in the test claim, and no new test claim has been filed on the amended regulations. Moreover, reasonably necessary activities are defined in the regulations as "those methods *not specified in statute or executive order* that are necessary to carry out the mandated program."[106]

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[102] The version of Form 8583 and the instructions included in the claimant's exhibits was revised in 2005, and was not pled in the test claim. See Exhibit K, Claimant Comments on Draft Proposed Parameters and Guidelines, at p. 81.

[103] Exhibit K, Claimant Comments on Draft Proposed Statement of Decision, at p. 8.

[104] Exhibit X, Excerpt from Test Claim Exhibits: California Code of Regulations, Title 11, sections 901-903.

[105] Exhibit A, Test Claim Statement of Decision, at p. 29.

[106] Code of Regulations, Title 2, section 1183.1.

c. The claimant's proposal provides reimbursement for activities in excess of the scope of the mandate.

As discussed above, claimant originally included a combination of RRMs and actual cost claiming for five levels of investigation in its revised proposed parameters and guidelines. The original proposal sought reimbursement for the full scope of investigative activities, as discussed herein.

DOF argues, in its comments on the claimant's revised proposed parameters and guidelines, that the claimant's proposal "*inappropriately includes the totality of its law enforcement response to reports of child abuse,* and all activities leading up to a full criminal prosecution." DOF argues that the activities alleged "extend beyond the limited investigation approved in the Statement of Decision (SOD) for the purpose of preparing and submitting Form SS 8583 to the Department of Justice (DOJ)."[107]

CDSS ignores the test claim statement of decision, and argues that *no investigation* is required under CANRA, except for the very narrow instance required under section 11165.14, not pled in this test claim.[108] However, CDSS also notes that its regulations require county welfare agencies to conduct in person interviews, and that "CDSS' investigatory requirements parallel the law enforcement activities described in the [parameters and guidelines] only up to the point that the patrol officer completes his or her duties in the investigation."[109] CDSS argues that county welfare agencies are required to make a determination whether to report to DOJ, pursuant to section 11169, on the basis of those initial in-person interviews. CDSS concludes: "[i]f these investigations comport with CANRA, and the county does not contend otherwise, it is improper for the county to maintain that the exhaustive and redundant investigatory steps performed by law enforcement in the criminal justice arena are mandated by CANRA."[110]

Based on these and other comments from the parties and interested parties, claimant submitted rebuttal comments and a *second revised* parameters and guidelines proposal.[111] The claimant's second revised proposed parameters and guidelines focuses primarily on the activities undertaken by law enforcement, leaving the remainder of the revised proposed parameters and guidelines substantially unchanged, and provides reimbursement for a list of repetitive activities, including interviews with the child, parents, siblings, witnesses, and suspect(s); follow up interviews by a child abuse investigator, if necessary; and a report detailing the findings, which must be reviewed by a supervisor.[112] The claimant also seeks reimbursement on a case-by-case basis for certain other activities that the claimant called "non-repetitive," including medical

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[107] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 1.

[108] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 1-3.

[109] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 11.

[110] Exhibit C, CDSS Comments on Claimant's Revised Proposed Parameters and Guidelines, at p. 11.

[111] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 9.

[112] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 15-17.

examinations, obtaining a search warrant, DNA testing, conducting an autopsy, and collecting, storing, and reviewing physical evidence.[113]

In exhibits attached to the revised proposed parameters and guidelines the claimant submitted declarations from Suzie Ferrell and Daniel Scott, both of whom are employees of the Los Angeles County Sheriff's Department, and both of whom assert a belief that all activities described in the proposal are "*reasonably necessary in conducting ICAN investigations*, preparing ICAN reports and performing other required ICAN duties."[114] The Scott declaration introduces an excerpt from the Los Angeles County Sheriff's Department Child Abuse Protocol, which describes the procedures followed by the department in response to a report of suspected child abuse. The Scott declaration also states that "it is my information and belief that the omission of one or more ICAN activities described in Exhibit 4 or ICAN steps described in Exhibit 2 could impair the requirement to conduct an 'active investigation'" as defined in the DOJ forms.[115] Neither declarant provides any indication that he or she has considered whether the steps should be reimbursable; only that they are necessary to complete an investigation. Moreover, what is *reasonably necessary* to implement the mandate is a finding of law, and the declarations submitted by the claimant may inform that decision, but do not control the legal issue.

In exhibits attached to the claimant's second revised proposed parameters and guidelines, a new declaration from Ms. Ferrell states that the revised proposal "contains only those activities that are reasonably necessary in order to complete the state 'Child Abuse Investigation Report' Form SS 8583," and that "those activities necessary to meet additional criminal prosecution duties are not included" in the second revised proposal.[116] In both the rebuttal comments and second revised proposed parameters and guidelines, and in comments filed on the draft proposed statement of decision and parameters and guidelines, the claimant continues to emphasize the credentials of the declarants, and that the declarants believe that "omission of one or more ICAN investigation activity [*sic*] could impair the requirement to conduct an active investigation."[117] The claimant concludes that each declarant's statement should be given considerable weight, for example: "Sergeant Scott provides substantial evidence supporting the County's version of reimbursement provisions for child abuse investigations." More specifically, the claimant objects to the absence of reimbursement in the proposed parameters and guidelines for "assessing the nature and seriousness of the known or suspected abuse," and "gathering and

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[113] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 9; 18.

[114] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Narrative, at pp. 9; 45; 53.

[115] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 3, Declaration of Daniel Scott, at pp. 1-2.

[116] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines.

[117] Exhibit K, Claimant Comments on Draft Proposed Statement of Decision and Parameters and Guidelines, at p. 11. See also, Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 50.

preserving evidence." The claimant's proposed reimbursable activity with respect to investigating child abuse would include the following:

> Except as provided in the paragraph below, reimbursement for this activity includes but is not limited to: assessing the nature and seriousness of the known or suspected abuse, review of the initial Suspected Child Abuse Report (Form 8572); conducting interviews of the victim(s) and parent(s) and any known suspect(s) and witness(es) in their spoken language when appropriate and/or available; gathering and preserving evidence including, but not limited to, where applicable, videotaping interviews, obtaining medical exams, mental health exams, autopsies, DNA samples and polygraph tests necessary to gather and preserve evidence to determine if child abuse is unfound or if not unfound, whether child abuse is inconclusive or substantiated; and preparing a report that will be retained in the files of the investigating agency.

As discussed throughout this analysis, the scope of reimbursable investigative activities is limited by the plain language of the statute, which requires an investigation *to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated*. In addition, the scope of investigation is limited to the degree of investigation that DOJ has allowed to constitute a "retainable report;" in other words, the *minimum* degree of investigation that is sufficient to complete the reporting requirement is the *maximum* degree of investigation reimbursable under the test claim statute. Based on the following analysis, the Commission finds, as a matter of law, that the activities described in the declarations, and in the proposed language, go beyond the scope of the mandate, as discussed herein.[118]

Penal Code section 11164 states that the "intent and purpose of [CANRA] is to protect children from abuse and neglect." The section recognizes that investigation is essential to the purpose (though it does not necessarily imply that all investigations will lead to criminal prosecution or penalties), saying: "[i]n any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."[119] CDSS argues, accordingly, that the purpose of CANRA is the protection of children, not the investigation and prosecution of crime.[120] CDSS argues that the reporting required by CANRA does not involve identification of suspects,[121] does not require the same standards of proof as a criminal

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[118] The declarations submitted still fail to address specifically whether reimbursement is required for these activities. The declarants, and the claimant more broadly, suggest that if the Commission limits reimbursement as proposed, law enforcement agencies will fail to complete an investigation. There is no evidence that the completion of an investigation relies so closely upon the level of mandate reimbursement; and, moreover, the limitations proposed are consistent with the statement of decision, and with the reimbursement requirement of article XIII B, section 6.

[119] Penal Code section 11164 (Stats. 2000, ch. 916 (AB 1241)).

[120] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 1-2.

[121] Section 903 of title 11, Code of Regulations, states that all information on the form 8583, "should be completed." However, the same section also states that a "retainable report" entered

investigation or prosecution, and does not differentiate cases on the basis of severity.[122] The point is well-taken: if a significant focus of CANRA were the investigation of criminal instances of child abuse, the requirements of section 11169 would be crafted differently for law enforcement agencies as compared with county welfare departments, respective to their abilities and resources. But the requirements are *not* crafted differently for different agencies; the requirements to complete an investigation and to report to DOJ apply equally to all entities subject to the mandate. To the extent that a mandate to investigate can be tied to or derived from CANRA, it must be limited to the investigative activities that all agencies can and do undertake. Any further investigation should not be attributed to the mandate of CANRA.

The CDSS Manual of Policies and Procedures, an excerpt of which is submitted by the claimant as Exhibit 9, states that a social worker "shall have in-person contact with all children alleged to be abused," and if the report is not unfounded, "shall interview all children present at time of the investigation, and all parents who have access," and "shall make a determination as to whether services are appropriate," and "shall request assistance from law enforcement if necessary." The Manual goes on to state that the county "shall submit a report pursuant to PC Section 11169 to the Department of Justice of every case it investigates…that it has determined not to be unfounded."[123] CDSS does not assert that all activities required in the Manual of Policies and Procedures are required by CANRA; in fact most are required by the Welfare and Institutions Code.[124] Nevertheless, as CDSS points out:

> Every year, thousands of reports are referred by county welfare departments to the Department of Justice based on the results of these investigations. *CDSS is aware of no case [or] instance in which the Department of Justice rejected a county welfare department CACI referral based on the sufficiency of the social worker's investigation.*

CDSS argues that the maximum level of investigation that county welfare departments are required to undertake is to conduct interviews with parents, suspects, victims, and witnesses, and that "[b]ased on these investigative activities; the social worker is required under CDSS regulations at MPP 31-501 to determine whether the results of the investigation require referral to the Department of Justice under CANRA."[125]

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into the index may include "[e]ither the suspect(s) name or the notation 'unknown.'" (Code of Regs., tit. 11, § 903 (Reg. 98, No. 29)).

[122] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at p. 8.

[123] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at Exhibit 9.

[124] Exhibit X, CDSS MPP 31-101et seq. referencing Welfare and Institutions Code section 16501(f) as the source of the requirement to investigate. See also Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines p. 15 stating the following: "The investigative activities performed by county social workers under CDSS's regulations are exclusively and totally connected with duties established under the Welfare and Institutions Code, not CANRA. Accordingly, costs for those activities are not related to the claim in the matter."

[125] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 10-11 [emphasis added].

> In summary, these rules require the social worker to first decide whether an in-person investigation is necessary, which includes consideration of a multitude of considerations. If an in-person is investigation of reported child abuse is determined to be necessary, CDSS regulations at MPP 31-115 describe what steps are necessary for the conduct of the investigation. These rules require direct contact with all alleged child victims, and at least one adult who has information regarding the allegations. If after that stage the social worker does not find the referral to be unfounded, the social worker must conduct an in-person investigation with all children present at the time of the initial in-person investigation, all parents who have access to the child alleged to be at risk of abuse, noncustodial parents if he/she has regular or frequent in-person contact with the child, and make necessary collateral contacts with persons having knowledge of the condition of the child. *Based on these investigative activities*; the social worker is required under CDSS regulations at MPP 31-501 *to determine whether the results of the investigation require referral to the Department of Justice under CANRA*. There is no requirement for redundancy in the investigation as described PG between patrol officer and detective interviews. There is no tracking, booking, or arresting of suspects. There is *no requirement for forensic evidence to be collected or analyzed*. There is no review of school records. Basically, CDSS' investigatory requirements parallel the law enforcement activities described in the PG only up to the point that the patrol officer completes his or her duties in the investigation.[126]

CDSS concludes that the interviews with suspect(s), victim(s) and witness(es) conducted by county welfare departments are *sufficient to comply with the mandate*, and that law enforcement activities are reimbursable only to the same extent.[127] The claimant has requested reimbursement, as discussed above, for a much more extensive investigation normally pursued by law enforcement agencies, whether the investigation results in a finding of no child abuse, or a finding that the suspected child abuse is substantiated. In accordance with CDSS' evidence, and the plain language of the test claim decision and the approved statute and regulations, the Commission finds that a patrol officer's (or county probation or county welfare employee's) interviews with the child, parents, siblings, witnesses, and/or suspect(s), and preliminary report of the findings, including supervisory review, constitute the maximum extent of investigation necessary to make the determination whether to forward the report to DOJ, and to make the report retainable.

In comments submitted in response to the draft proposed statement of decision and parameters and guidelines, the claimant disputes that the mandate applies equally to all agencies, labeling the reasoning above the "lowest common denominator theory." The claimant argues that this theory "assumes facts not in evidence," and that Commission staff and CDSS have not cited "any evidence that county welfare agencies are not complying with the requirements of conducting an

[126] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 10-11.

[127] *Id*, at p. 11.

"active investigation."[128] Indeed, staff has not cited any evidence that CDSS, or other agencies, are not complying with the mandate, and this is precisely the point: CDSS asserts that county welfare agencies *have complied with the mandate,* and that the investigative activities performed under CDSS guidance have been *sufficient* to satisfy DOJ requirements with respect to its Child Abuse Summary Reports, and thus the level of investigation performed by county welfare agencies *satisfies* the mandate.[129]

As discussed above, the test claim statutes require that child protective agencies subject to the mandate forward all reports that are "not unfounded," and the duty to investigate under section 11169 arises from the requirement to forward reports and to make that determination.[130] The point at which the decision is made to close the case (an unfounded report), or continue the investigation (an inconclusive or substantiated report), is the point at which a determination sufficient to control whether a report will be forwarded to DOJ has been made. The claimant's evidence demonstrates that an investigation that results in a finding of no child abuse will conclude with the patrol officer's interviews and the filing of a closure report, which must be approved by a supervisor.[131] Where some evidence is found that necessitates follow-up interviews by a child abuse investigator, the claimant classifies the case as a "Level 3" investigation, which apparently is expected to conclude with a report to DOJ, according to the claimant's proposed activities:

> *[¶…¶]*
>
> *8. Supervising officer reviews investigation findings and approves report indicating child abuse is suspected.*
>
> *9. Secretary distributes, processes report.*
>
> *10. Child abuse investigator reviews child abuse report.*
>
> *11. Child abuse investigator conducts suspect background check.*
>
> *12. Child abuse investigator confers with social services.*
>
> *13. Child abuse investigator interviews child/children.*
>
> *14. Child abuse investigator interviews witnesses.*
>
> *15. Child abuse investigator interviews suspect(s).*
>
> *16. Child abuse investigator writes additional reports.*

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[128] Exhibit K, Claimant Comments on Draft Proposed Statement of Decision and Parameters and Guidelines, at p. 12.

[129] Exhibit C, CDSS Comments on Revised Proposed Parameters and Guidelines, at pp. 10-11.

[130] As noted previously, the current text of section 11169 requires reporting to DOJ only of "substantiated" reports, rather than those that are "not unfounded," but the effective date of this change is the same as the date after which law enforcement agencies no longer must report to DOJ in any event, and therefore the change is irrelevant to the discussion in this section.

[131] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 16.

17. Supervisor approves reports.

18. Secretary process final files and reports.

19. Child abuse investigator completes DOJ/CACI form.

20. Child abuse investigator completes advisement form to suspect(s).[132]

The claimant's proposed language thus presumes that all Level 3 investigations will result in a report to DOJ, and therefore that all Level 3 investigations are "not unfounded."

Therefore, because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that county welfare departments take before determining whether to forward the report to DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. All further investigative activities are not reimbursable under the mandate, because, in a very practical sense, once evidence is being gathered for criminal prosecution, the determination that a report is "not unfounded" has been made, and the investigative mandate approved in the test claim statement of decision has been satisfied.[133]

In comments on the draft staff analysis the claimant continues to stress that an "active investigation" is required by the test claim statute and DOJ regulations. However, the claimant relies on regulations not approved in the test claim decision, as discussed above, and on a theory that a complete report filed with DOJ requires a more extensive investigation than that provided for in the test claim decision. The above analysis is not changed: the mandate, as approved in the test claim decision, is to conduct an investigation sufficient to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, and thus whether a report must be forwarded to DOJ. The *maximum* scope of investigation required to make that determination, and to complete the report to DOJ, is the *minimum* level of investigation necessary to make the report retainable by DOJ. The evidence submitted by CDSS demonstrates that reports based only on interviews with suspects, witnesses, parents, and the victim(s) have been and are retainable. The claimant has not submitted evidence to the contrary.

Based on the foregoing, the Commission finds that the activities proposed for reimbursement to law enforcement agencies exceed the activities approved in the test claim statement of decision, as specified, and that the maximum extent of reimbursement under the mandate includes a patrol officer's (or county probation or county welfare employee's) interviews with the child, parents, witnesses, and/or suspects, and the reporting of those findings, which may be reviewed by a supervisor, where applicable.

d. <u>The requirement to investigate arises from both sections 11166 and 11169, but only investigative activities required pursuant to section 11169 are reimbursable.</u>

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[132] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 17.

[133] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 2, at pp. 2-6.

The Commission's approval of investigative activities cites Penal Code section 11169 and *Alejo v. City of Alhambra*. *Alejo*, in turn, relied on both sections 11166(a) and 11169 for its finding that police are required to investigate reports of suspected child abuse. Ultimately, the Commission found, in the test claim statement of decision, that the activities of mandated reporters, required under section 11166(a), were not reimbursable because they were not unique to government.[134]

Alejo involved a child being abused by his mother's live-in boyfriend. The child's father reported the abuse to police, but they failed to investigate, or cross-report, or create any internal report. The child was soon after severely beaten and left permanently disabled, and the police department and the officer who took the report were sued on a negligence per se theory. The court explained that a negligence per se action will lie where (1) there has been a violation of statute or regulation; (2) the harm to the plaintiff was caused by the violation of statute or regulation; (3) the harm is of the type intended to be prevented by the statute or regulation; and (4) the plaintiff is within the class of persons that were to be protected by the statute or regulation. The court held that the only elements in issue were the causation question, and whether the failure to investigate upon receipt of a report of child abuse from the father was a violation of the statute.[135]

Relying on *Williams v. State of California* (1983) 34 Cal.3d 18, the court found that, as a general rule, police do not have a duty to act, including a duty to investigate. In *Williams*, the California Supreme Court concluded:

> In spite of the fact that our tax dollars support police functions, it is settled that the rules concerning the duty - or lack thereof - to come to the aid of another are applicable to law enforcement personnel in carrying out routine traffic investigations. Thus, the state highway patrol has the right, but not the duty, to investigate accidents.[136]

The California Supreme Court also observed that "the intended beneficiaries of any investigation that is undertaken are the People as prosecutors in criminal cases, not private plaintiffs in personal injury actions."[137] Accordingly, the *Alejo* court concluded that "[t]herefore, absent a special relationship or a statute creating a special duty, the police may not be held liable for their failure to provide protection."[138]

However, the court found that section 11166 imposes such a duty on police officers: "[s]ection 11166, subdivision (a) creates such a duty."[139] Section 11166, as it read in 1999, provided, in pertinent part:

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[134] Exhibit A, Test Claim Statement of Decision, at p. 31; *Alejo v. City of Alhambra*, (Cal. Ct. App. 2d Dist. 1999) 75 Cal.App.4th 1180.

[135] *Alejo, supra*, at pp. 1184-1185.

[136] *Williams, supra*, 34 Cal.3d at p. 24.

[137] *Williams, supra*, 34 Cal.3d at p. 24, Fn 4.

[138] *Alejo, supra*, 75 Cal.App.4th at pp. 1186.

[139] *Alejo, supra*, 75 Cal.App.4th at pp. 1186.

> (a) Except as provided in subdivision (b), any child care custodian, health practitioner, employee of a child protective agency, child visitation monitor, firefighter, animal control officer, or humane society officer *who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment, whom he or she knows or reasonably suspects has been the victim of child abuse, shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible*… For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse.[140]

The *Alejo* court concluded that although nothing in the plain language of section 11166 requires a mandated reporter to investigate child abuse:

> [I]t clearly envisions some investigation in order for an officer to determine whether there is reasonable suspicion to support the child abuse allegation and to trigger a report to the county welfare department and the district attorney under section 11166, subdivision (i) and to the Department of Justice under section 11169, subdivision (a). The latter statute provides in relevant part: "A child protective agency shall forward to the Department of Justice a report in writing of *every case it investigates* of known or suspected child abuse which is determined not to be unfounded .... A child protective agency *shall not forward* a report to the Department of Justice *unless it has conducted an active investigation* and determined that the report is not unfounded, as defined in Section 11165.12."[141]

Furthermore, the *Alejo* court held that the statute imposed a duty "to take further action when an objectively reasonable person in the same situation would suspect child abuse," including reporting to a child protective agency immediately or as soon as practically possible. And finally, the *Alejo* court concluded that "[c]ontrary to the city's position, the duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse. The language of the statute, prior cases and public policy all support this conclusion."[142]

In the test claim statement of decision here, the Commission noted that "the court [in *Alejo*] was not examining the law from a mandates perspective, and made the finding based on current law." Therefore the Commission was compelled to examine prior law, and consider the court's decision in the context of mandates law to determine whether new programs or higher levels of service were mandated by the test claim statutes. With respect to prior law, the Commission noted that former Penal Code section 11161.5 required that: "[c]opies of all written reports

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[140] Penal Code section 11166 (Stats. 1996, ch. 1081 (AB 3354) [current version employs the term "mandated reporter," which is in turn defined in section 11165.7]) [emphasis added].

[141] *Alejo v. City of Alhambra*, *supra*, 75 Cal.App.4th 1180, at page 1186. [Emphasis added.]

[142] *Alejo, supra*, 75 Cal.App.4th at pp. 1186-1187.

received by the local police authority shall be forwarded to the Department of Justice."[143] The Commission found that the prior law did not require investigation, but required police only "to forward a copy of the report to the state, as received."[144] The Commission concluded:

> No earlier statutes required any determination of the validity of a report of child abuse or neglect before completing a child abuse investigative report form and forwarding it to the state. Therefore, the Commission finds that an investigation *sufficient to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive*, as defined by Penal Code section 11165.12, is newly mandated by Penal Code section 11169, subdivision (a), as described by the court in *Alejo*.[145]

With respect to other mandates law considerations, the Commission held that because section 11166(a), which governs the duties of a mandated reporter, applies to a number of different professions, public and private, the requirements imposed are not unique to government, and therefore cannot be reimbursable.[146] Accordingly, the Commission found that "Penal Code section 11166, subdivision (a), does not mandate a new program or higher level of service on local governments for the activities required of mandated reporters."[147] Therefore, even though the court in *Alejo* found that section 11166(a) imposed a duty to investigate on the police officer as a mandated reporter, reimbursement is not required for costs arising from that duty; section 11166(a) was therefore denied. Thus the test claim statement of decision approved reimbursement for the investigation of suspected child abuse, and for forwarding reports that are "not unfounded" to the DOJ, as specified, relying only on section 11169, as interpreted by the court in *Alejo*.[148]

e. <u>Only investigative activities conducted by the agency subsequent to the receipt of a mandated report are reimbursable; reimbursement is not required for investigative activities conducted by employees of a county child protective agency pursuant to the duties of a mandated reporter.</u>

Because section 11166(a) was held by the *Alejo* court to impose a duty upon individuals employed by a local child protective agency to investigate, but is not reimbursable, the parameters and guidelines must be crafted to avoid over-claiming when the mandated reporter in

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[143] Former Penal Code section 11161.5 (Stats. 1973, ch. 1151).

[144] Exhibit A, Test Claim Statement of Decision, at pp. 29-30.

[145] Exhibit A, Test Claim Statement of Decision, at p. 31 [emphasis added]. See also *Alejo v. City of Alhambra*, *supra*, 75 Cal.App.4th 1180, 1186.

[146] See *County of Los Angeles v. State of California* (1987) 43 Cal.3d.46, at p. 56 [Reimbursement required only for "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."].

[147] Exhibit A, Test Claim Statement of Decision, at p. 16.

[148] *Ibid*.

a particular case is also an employee of the child protective agency that will complete the investigation under section 11169.

Under section 11165.9, reports "shall be made by mandated reporters to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department." And under section 11165.7, mandated reporters include "[a]ny employee of any police department, county sheriff's department, county probation department, or county welfare department."[149] Thus an employee of any of those agencies, represented here by the claimant, Los Angeles County, could be both a mandated reporter, and a recipient of mandated reports. In that event a mandated reporter could be required both to complete the initial report of suspected child abuse, and to investigate that report in order to determine whether to forward the matter to DOJ. In this manner the requirements of section 11166(a) and 11169 might be completed by the same agency, or even the same employee, and because the former requirements under section 11166(a) are not reimbursable, a claimant must not be permitted to claim reimbursement for investigative activities conducted pursuant to section 11166(a). In that event, reimbursement is required for investigative activities necessary to complete the agency's duties under section 11169, but not for any investigation already completed by the mandated reporter under section 11166(a).

As discussed above, a mandated reporter's duty to investigate under section 11166(a) pursuant to the holding in *Alejo* is not reimbursable. The precise scope of this investigative duty is not specified, but all mandated reporters are expected to employ the Form SS 8572 to report suspected child abuse to one of the identified child protective agencies. This duty is triggered whenever the mandated reporter, *in his or her professional capacity or within the scope of his or her employment*, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.[150] Given that the scope of employment within a law enforcement agency, county probation department, or county welfare agency generally includes investigation and observation for crime prevention, law enforcement and child protection purposes, information may be obtained by an employee which triggers the requirements of section 11166(a), and ultimately leads to an investigation and report to DOJ under section 11169(a). Ultimately, some of the same information necessary to satisfy the reporting requirements of section 11169 and the DOJ regulations may be obtained in the course of completing a mandated reporter's (non-reimbursable) duties under section 11166(a) (as discussed above, section 11169 requires a determination whether a report is unfounded, inconclusive, or substantiated, and Code of Regulations, title 11, section 903, as amended by Register 98, No. 29, requires certain information items in order to complete a "retainable report").

The more recent amendments to the regulatory sections pled in the test claim provide that an agency must complete all information required in Form SS 8583.[151] But those amended

[149] Penal Code section 11165.7 (As amended by Stats. 2000, ch. 916).

[150] Penal Code section 11166(a) (Stats. 2000, ch. 916).

[151] Section 902 of title 11, Code of Regulations, provides that "[i]n order to fully meet its obligations under CANRA, an agency required to report instances of known or suspected child

regulations are not the subject of this test claim; the test claim statement of decision approved only Code of Regulations, title 11, section 903 *as amended by Register 98, No. 29*, which adopted the Form SS 8583, and required that only "certain information items...must be completed." Those information items, as discussed above, impose a very low standard of investigation for reporting to DOJ regarding instances of known or suspected child abuse. Because, as discussed above, a mandated reporter is expected to do what is reasonable within the scope of his or her experience and employment, a mandated reporter who is an employee of a child protective agency necessarily has a greater responsibility to investigate when he or she has reasonable suspicion of child abuse.[152] Therefore the regulations and statutes approved in the test claim statement of decision impose very little beyond what would otherwise be expected of a mandated reporter in the employ of a child protective agency, and therefore reimbursement must be limited to only such investigative activity as is necessary to satisfy the mandate of section 11169, but not mandated on the individual employee under section 11166.

Therefore, any investigation conducted by an employee of a county law enforcement agency, county welfare department, or county probation department, *prior to the completion of a Form SS 8572 under section 11166(a)*, is not reimbursable under this mandated program. And, if the Form SS 8572 is *completed by an employee of the same agency*, and the information contained in the Form SS 8572 is *sufficient to make the determination and complete the essential information items required by section 11169 and the regulations*, no further investigation is reimbursable.[153]

Thus, the parameters and guidelines authorize reimbursement for investigation only to the extent information has not been previously obtained by a mandated reporter within the same agency, in the course of the investigation already performed by the mandated reporter within the scope of his or her employment, to determine if a report of child abuse is not unfounded.[154] If the mandated reporter in a particular case is not an employee of the investigating agency, the agency maintains an independent and reimbursable duty to investigate in order to determine whether a

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abuse or severe neglect must complete all of the information on the BCIA 8583. Only information from a fully completed BCIA 8583 will be entered into the CACI."

[152] See Alejo, supra, 75 Cal.App.4th, at p. 1187 ["duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse"].

[153] This position is supported by the description submitted by the claimant of the investigative activities conducted by law enforcement: each of the four levels of investigation, as discussed above, begins with receiving a "SCAR [Suspected Child Abuse Report, Form 8572] *from Department of Children and Family Services*." There is no mention of reimbursement for the situation in which the mandated reporter is an officer in the same law enforcement agency. The claimant's requested reimbursable activities appear to assume, correctly, that any investigative activities prior to the completion of a Form 8572 will not be reimbursed; only investigative activities subsequent to the receipt of a Form 8572 are proposed for reimbursement. (Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at pp. 4-7; 23-24).

[154] "Unfounded reports" are defined as reports that are determined false, to be inherently improbable, to involve accidental injury, or not to constitute child abuse or neglect as defined by Penal Code section 11165.12.

report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583. If necessary, the investigating agency may need to verify the information reported on the Form SS 8572. But where the mandated reporter is an employee of the investigating agency, investigative activities necessary to complete Form 8583 to submit to DOJ, and not any investigation which was required to complete Form 8572, are reimbursable; and where the investigation undertaken to complete Form SS 8572 is sufficient also to complete Form SS 8583, and to satisfy the mandate of section 11169 to determine whether the report must be made to DOJ, reimbursement is not required for any further investigation.

f. <u>The mandate to report to DOJ regarding suspected child abuse has been limited by subsequent legislation, as provided</u>.

As stated above in analyzing the period of reimbursement, section 11169 was amended by the Legislature in 2011, ending the mandate for law enforcement agencies to investigate and forward to DOJ, and limiting the requirement for all other local agencies to forwarding only those reports that are substantiated. Penal Code section 11169 was amended in 2011 to provide that "[o]n and after January 1, 2012, a police department or sheriff's department specified in Section 11165.9 *shall no longer forward to the Department of Justice* a report in writing of any case it investigates of known or suspected child abuse or severe neglect."[155] Therefore, both the requirement to "[f]orward to the Department of Justice a report in writing of every case it investigates," as well as the requirement to "[c]omplete an investigation…for purposes of preparing and submitting the state 'Child Abuse Investigation Report' Form SS 8583,"[156] are ended, *for purposes of reimbursement to law enforcement agencies*, as of January 1, 2012. Penal Code section 11169 also was amended at the same time to provide that only "substantiated" reports of suspected child abuse shall be forwarded to the DOJ by agencies other than law enforcement, rather than reports that are "not unfounded," as was the requirement under prior law.[157] This results in fewer reports being forwarded to DOJ by the agencies remaining subject to the mandate.

Therefore, because the statute at issue has been amended to end the requirement as applied to law enforcement, the activities approved by the Commission in the test claim statute must also end, as applied to law enforcement, and the requirement to forward reports to DOJ must be limited, as applied to all other entities subject to the mandate, as of January 1, 2012. Section IV of the parameters and guidelines reflects these dates.

g. <u>Reimbursement for activities required to report to DOJ regarding reports of suspected child abuse is approved for all agencies subject to the mandate, but for law enforcement only until December 31, 2011, and for forwarding inconclusive reports only until December 31, 2011</u>.

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[155] Penal Code section 11169(b) (Amended by Stats. 2011, ch. 468, § 2 (AB 717)).

[156] Exhibit A, Test Claim Statement of Decision, at p. 45.

[157] Penal Code section 11169(a) (Amended by Stats. 2011, ch. 468, § 2 (AB 717)). Compare Penal Code section 11169 (As amended by Stats. 2000, ch. 916 (AB 1241)).

The test claim statement of decision approved reimbursement for investigation of reports of suspected child abuse, but only to the extent of an investigation sufficient to determine whether a report of suspected child abuse or neglect must be forwarded to DOJ. The test claim statement of decision also approved reimbursement for reporting to DOJ all reported instances of known or suspected child abuse that are determined, after investigation, to be "not unfounded." Based on the foregoing analysis, an investigation sufficient to make that determination is complete after a law enforcement officer, or county welfare employee, or county probation department employee where applicable, has completed in-person interviews with the parents, suspects, victims, and witnesses, if any, and reported his or her findings. And, because the mandate to investigate applies equally to all agencies subject to the reporting requirements, reimbursement must be limited to the activities that are or can be performed by all agencies subject to the mandate, and must exclude the collection of physical or forensic evidence, and the building of a criminal case. Moreover, because the activities of mandated reporters under section 11166(a) are not reimbursable, any investigative activity to be reimbursed under section 11169 must exclude investigative activities conducted by a mandated reporter prior to submission of a Form SS 8572, even if the mandated reporter is an employee of an otherwise-reimbursable county agency. And finally, the investigative activities of law enforcement agencies are no longer mandated under the test claim statutes as of January 1, 2012, pursuant to amendments made to the underlying code sections, as discussed above.

Pursuant to the above analysis, the following activities are approved for reimbursement in the parameters and guidelines:

Reporting to the State Department of Justice

a. ***From July 1, 1999 to December 31, 2011****, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:*[158]

1) *Complete an investigation for purposes of preparing the report*

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.[159] *Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and*

[158] Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ *for law enforcement agencies only* ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.

[159] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

making a report of the findings of those interviews, which may be reviewed by a supervisor.

Reimbursement is not required in the following circumstances:

i. *Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).*

ii. *In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).*

iii. *Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.*

2) *Forward reports to the Department of Justice*

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice (currently form 8583) and may be sent by fax or electronic transmission.[160]

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated or inconclusive to a finding of unfounded or from inconclusive or unfounded to substantiated.

Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.

[160] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

b. ***Beginning January 1, 2012****, county welfare departments, or county probation departments where designated by the county to receive mandated reports shall:*

1) *Complete an investigation*

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.[161] *Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.*

Reimbursement is not required in the following circumstances:

i. *Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).*

ii. *In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).*

iii. *Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583.*

2) *Forward reports to the Department of Justice*

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated, as defined in Penal Code section 11165.12. Unfounded or inconclusive reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice.

[161] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission.[162]

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated to a finding of inconclusive or unfounded, or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI.

Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.

In response to the draft proposed parameters and guidelines, the claimant submitted comments objecting to the limitation specifying that activities undertaken *subsequent to the determination* whether a report of child abuse is substantiated, inconclusive, or unfounded, "including the collection of physical evidence, the referral to a detective, the conduct of follow-up interviews, and the potential making of an arrest,"[163] were not reimbursable. The claimant stated that this limitation could be read to imply that these activities would be reimbursable if undertaken prior to making the determination whether a report should be forwarded to DOJ, but not reimbursable if performed after making a determination and forwarding the report. In addition, the claimant stated that not all agencies have "detectives," and that only those that do would be denied reimbursement. The intent of the limiting language above is merely to clarify that the focus of reimbursement for investigations should remain the *determination of whether to file a report with DOJ* (i.e., whether a report is unfounded, inconclusive, or substantiated). The collection of physical evidence, the referral to a senior investigating officer, whether or not that person is called "detective," and conducting follow-up interviews are all activities listed in the claimant's time studies[164] that should logically only be conducted in the case that the suspected child abuse is "not unfounded," and logically only performed after such determination has been made, and the mandate satisfied. Accordingly, the limitation of reimbursement stated above is amended to omit the word "detective," but otherwise unaffected.

[162] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

[163] See Exhibit I, Draft Staff Analysis and Proposed Parameters and Guidelines, at pp. 45; 88.

[164] See Exhibit B, Revised Proposed Parameters and Guidelines, at pp. 7-9.

4. Notifications Following Reports to the Child Abuse Central Index

The test claim statement of decision approved reimbursement to notify a known or suspected child abuser that he or she has been listed in the CACI. That and other notice requirements are included in the proposed parameters and guidelines, in accordance with the following analysis.[165]

a. Notifying the suspected abuser may include the SOC 832 form but this activity is ended, for law enforcement agencies, as of January 1, 2012.

In addition to the notice requirements approved in the test claim decision, the claimant has proposed reimbursement for the following activities when several of the approved notice requirements are triggered:

- *[For law enforcement agencies:] Child abuse investigator completes advisement form to suspect(s); and*[166]
- *[For county welfare departments:] Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form.*[167]

In addition, the claimant has proposed that the above activities should include "sending the person listed in CACI with [sic] a 'Request for Grievance Hearing' form (SOC 834)."[168] There is no requirement in the statute or the approved regulations to provide this form along with the notice to the person listed. Providing the "Request for Grievance Hearing" form is denied.

Form SOC 832 was developed by CDSS, and is intended for use by county welfare departments to inform a known or suspected abuser that he or she has been reported to the CACI. It is not clear, based on the evidence in the record, whether any other agencies or departments also employ this form, but the Commission finds that completion of the Notice of Child Abuse Central Index Listing form (SOC 832), at item 3, above, is a reasonable means of implementing the expressly approved activity to "[n]*otify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice."*[169]

Additionally, the activity described here, to notify a suspected abuser that he or she has been listed in the index at the time the agency files the "Child Abuse Investigation Report" with DOJ, is ended, for law enforcement, as of January 1, 2012. This requirement arises from Penal Code section 11169, which, as discussed above, was amended in Statutes 2011, chapter 468, ending the requirement for law enforcement to forward reports of suspected child abuse to DOJ as of January 1, 2012. Because the requirement above is to notify the suspected abuser *at the time the*

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[165] Exhibit I, Draft Staff Analysis and Proposed Parameters and Guidelines, at pp. 48-53; 88-90.

[166] Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 17.

[167] Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 27.

[168] Exhibit K, Claimant Comments on Draft Staff Analysis, at p. 34.

[169] Exhibit A, Test Claim Statement of Decision, at p. 45.

report is filed with DOJ, and because law enforcement agencies "shall no longer" file those reports, the notice requirement is also ended.

The parameters and guidelines reflect the completion of the form SOC 832, as a reasonable means of complying with the approved activity, and reflect the end date of this activity for law enforcement agencies, as follows:

> *a. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:*
>
> *1) Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice.*[170]
>
> *This activity includes, where applicable, the completion of the Notice of Child Abuse Central Index Listing form (SOC 832), or subsequent designated form.*
>
> ***For law enforcement agencies only, this activity is eligible for reimbursement from July 1, 1999 until December 31, 2011, pursuant to amendments to Penal Code section 11169(b), enacted in Statutes 2011, chapter 468 (AB 717), which ends the mandate to report to DOJ for law enforcement agencies.***
>
> ¶…¶
>
> **b. <u>When information is received from CACI in the normal course of investigating or licensing duties, agencies are required to obtain and objectively review the original investigative report when making decisions regarding a new investigation, prosecution, licensing, or placement of a child, but not required to initiate a new investigation.</u>**

The test claim statement of decision also approved the following, related to the notice requirements, and triggered by the receipt of information from the CACI during the course of a routine investigation, or an investigation of a current report of suspected child abuse or neglect:

> *Any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:*
>
> - *Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution,*

[170] Penal Code section 11169(c) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241)). This activity is ended for law enforcement as of January 1, 2012, pursuant to Statutes 2011, chapter 468 (AB 717).

licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).) [171]

Information implicating the requirement to obtain and review the original report may be *received from DOJ* by the means described in section 11170. Section 11170, as amended by Statutes 2000, chapter 916, provides, in pertinent part:

> The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a district attorney who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency…
>
> ¶…¶
>
> The department shall make available to the State Department of Social Services or to any county licensing agency that has contracted with the state for the performance of licensing duties information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position having supervisorial or disciplinary power over a child or children, or who will provide 24–hour care for a child or children in a residential home or facility…
>
> ¶…¶
>
> The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children…information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interests of the child.
>
> ¶…¶
>
> Persons or agencies, as specified in subdivision (b), if investigating a case of known or suspected child abuse or neglect, or the State Department of Social Services or any county licensing agency pursuant to paragraph (3), or an agency or court investigator responsible for placing children or assessing the possible placement of children pursuant to paragraph (5), to whom disclosure of any information maintained pursuant to subdivision (a) is authorized, are responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed,

[171] *Ibid.*

and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child.[172]

Thus the duty to obtain and objectively review the original investigative report is implicated when an agency, in the conduct of its ordinary duties, has occasion to inquire to DOJ regarding an individual currently under investigation regarding an instance of known or suspected child abuse, or before the agency seeking a license, or placement of a child, or an employee of a licensee or home in which a child would be placed. In such case, the DOJ is instructed by the above statute that it "shall make available" the information requested, and the agency, in turn, is required, when a listing in the CACI is made known, to obtain the original investigative report, and to review it objectively in order to evaluate licensing, placement, or prosecution decisions. The section then requires that persons or agencies, when conducting their existing duties to investigate cases of known or suspected child abuse, or when making a licensing determination, or when assessing the possible placement of children in a home, shall, *upon receipt of information from DOJ* regarding an individual suspected of child abuse, or regarding an instance of suspected child abuse, obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence and its sufficiency for making decisions within the agency's or person's discretion.

The purpose of this section can be inferred from its context, and from the expansion of its scope subsequent to Statutes 2000, chapter 916: Penal Code section 11170(b)(10) (renumbered) now imposes the same requirements on a Court Appointed Special Advocate investigating prospective employees or volunteers, a local government agency conducting a background check on a prospective peace officer employee, and a county welfare or adoption agency conducting a background check on a prospective employee or volunteer.[173] These are not persons who would normally be subject to an active, targeted investigation seeking information regarding suspected child abuse; rather, they are persons who would be subject to a routine background investigation before they can be granted employment, or some other benefit. The Commission does not here seek to exercise jurisdiction over subsequent amendments to section 11170; the expanded scope of the section is discussed only as it helps to illuminate the purpose of the requirement, which is to obtain and objectively review a report of suspected child abuse, when information is received from DOJ regarding an individual before the agency in the normal course of the agency's duties. The purpose of the test claim statute (section 11170, as last amended in 2000), then, must be to protect the individual seeking a license, or placement of a child in his or her home, from being summarily denied on the basis of a report contained in the CACI. And, with respect to a person being investigated for a more recent instance of known or suspected child abuse, the test claim statute is meant to ensure that a district attorney or other law enforcement or child protective agency does not pre-judge the individual based solely upon the existence of a prior report in the

[172] Penal Code section 11170(b) (Stats. 2000, ch. 916 (AB 1241)).

[173] Penal Code section 11170(b)(10) Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2005, ch. 279 (SB 1107); Stats. 2006, ch. 701 (AB 525); Stats. 2007, ch. 160 (AB 369); Stats. 2007, ch. 583 (SB 703); Stats. 2008, ch. 701 (AB 2651); Stats. 2008, ch. 553 (AB 2618); Stats. 2008, ch. 701 (AB 2651); Stats. 2009, ch. 91 (AB 247); Stats. 2010, ch. 328 (SB 1330); Stats. 2011, ch. 459 (AB 212); Stats. 2011, ch. 468 (AB 717); Stats. 2012, ch. 846 (AB 1712); Stats. 2012, ch. 848 (AB 1707)).

CACI; the investigating agency, or district attorney, must obtain and objectively review the prior report, and evaluate "its sufficiency for making decisions."[174]

However, the Commission finds that reimbursement is only required for the costs of *obtaining the original report and reviewing the report objectively*. This section *does not* mandate reimbursement of any investigative activities that implicate the requirement to obtain the original report, nor any investigative activities that might be necessary after reviewing the report with respect to "making decisions regarding investigation, prosecution, licensing, or placement of a child."[175]

Based on the foregoing, the parameters and guidelines provide for reimbursement as follows:

> *City or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, county welfare department, county licensing agency, or district attorney's office shall:*
>
> *Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and shall objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.*
>
> ***Reimbursement for this activity does not include investigative activities conducted by the agency, either prior to or subsequent to receipt of the information that necessitates obtaining and reviewing the investigative report.***

5. Record Retention

The test claim statement of decision approved reimbursement for record retention by local government agencies as follows:

> *Any city or county police or sheriff's department, or county probation department if designated by the county to receive mandated reports shall:*
>
> - Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years for counties and cities (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.
>
> *A county welfare department shall:*
>
> - Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code,

[174] Penal Code section 11170(b)(6) (Stats. 2000, ch. 916 (AB 1241)).

[175] *Ibid.*

§ 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[176]

Penal Code section 11169 provides that "Agencies, including police departments and sheriff's departments, shall retain child abuse or neglect investigative reports that result or resulted in a report filed with the Department of Justice pursuant to subdivision (a) for the same period of time that the information is required to be maintained on the CACI pursuant to this section and subdivision (a) of Section 11170."[177] Penal Code section 11170 provides that information from an inconclusive or unsubstantiated report is removed from CACI after 10 years, unless a new report of suspected child abuse is received relating to the same person or persons within that time. However, because agencies subject to the test claim statute were already subject to record retention time frames for these reports, claimants are only eligible for reimbursement for the higher level of service; the length of time exceeding the prior requirement.

Government Code sections 26202 and 34090 allow cities and counties, respectively, to authorize destruction of records after two years. The Commission found that while the test claim statute requires a minimum 10 years of record retention, the initial two years are not reimbursable because of this existing requirement. The additional minimum of eight years is reimbursable under the test claim statute, and the parameters and guidelines reflect this analysis.[178]

Similarly, Welfare and Institutions Code section 10851 permits destruction of records after three years for county welfare departments. The Commission found that because county welfare departments already had a duty to retain records for three years under Welfare and Institutions Code section 10851, records retention for a minimum of seven years should be reimbursed under the test claim: the length of time added to the retention requirement by the test claim statute.[179] The parameters and guidelines reflect this analysis.

The parameters and guidelines provide for reimbursement of eight and seven years, respectively, for record retention for county probation departments and county welfare departments. As explained here and in the test claim statement of decision, the years for which claimants are eligible for reimbursement for record retention are those eight and seven years, respectively, that *follow* the two or three year retention period required under prior law. Therefore the Commission adopts the following language:

> *City and county police or sheriff's departments, and county probation departments if designated by the county to receive mandated reports shall:*
>
> *Retain child abuse or neglect investigative reports, that result in a report filed with the Department of Justice for a minimum of eight years for counties and cities (a higher level of service above the prior two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within*

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[176] Exhibit A, Test Claim Statement of Decision, at pp. 46-47 [citations omitted].

[177] Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

[178] Exhibit A, Test Claim Statement of Decision, at pp. 37-38.

[179] *Ibid.*

the first 10-year period, the report shall be maintained for an additional 10 years.[180]

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.

County welfare departments shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years for welfare records (a higher level of service above the prior three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[181]

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first three years of record retention required under prior law, but only for the seven years following.

6. Due Process Procedures Extended to Individual Listed in CACI

The claimant has proposed reimbursement for due process requirements implicated by the test claim statutes, as follows:

> *Due process costs incurred by law enforcement and county welfare agencies to develop and maintain ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI].*

DOF suggests striking this requirement entirely, but without comment.[182] SCO suggests limiting this activity to one-time development of ICAN due process procedures.[183] These comments are set aside, pursuant to the following analysis.

It is not clear whether the claimant's proposed language encompasses the actual implementation of due process procedures and the provision of a constitutionally-appropriate hearing for

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[180] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

[181] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

[182] Exhibit D, DOF Comments on Revised Proposed Parameters and Guidelines, at p. 2.

[183] Exhibit E, SCO Comments on Revised Proposed Parameters and Guidelines, at p. 3.

individuals whose rights are affected by the test claim statutes, or is limited to the development of due process procedures. The following analysis will demonstrate that agencies have always been responsible, under the Constitution and laws of the United States, and of California, to provide due process protections to those listed in the Child Abuse Central Index, and that Statutes 2011, chapter 468 codified these protections in Penal Code section 11169. Claimants are therefore eligible for reimbursement for the ongoing costs of providing due process in each individual case, as well as the one-time costs of developing due process procedures.

a. <u>An individual's inclusion within the Child Abuse Central Index triggers that person's due process rights</u>.

The test claim statement of decision was adopted in 2007, without discussion of the precise contours of due process protections implicated by the test claim statute. In 2009 the Ninth Circuit Court of Appeals decided *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170, in which it was held that CANRA triggers an individual's 14th Amendment rights to due process of law, because inclusion in the CACI can affect a person's liberty or property interests: certain licenses, and a number of relevant vocations, are not available to a person listed in the CACI.[184]

The plaintiffs in *Humphries* were listed in the CACI as a result of an allegation of child abuse made by a rebellious teenager.[185] Out-of-state investigators determined that the report of child abuse was "substantiated," and the Humphries were arrested by Los Angeles County Sheriff's Department officers and the report of suspected child abuse forwarded to DOJ for listing in the index.[186] The Humphries were later cleared of any wrongdoing by the courts, but were unable to have their names removed from the CACI, in part because the investigator who had forwarded their names in the first instance was no longer employed with the department.[187]

The Humphries alleged that their listing in the CACI impacted their reputations and potentially their livelihood: Mrs. Humphries worked as a special education teacher, and introduced evidence that renewal of her teaching credentials might be halted by the information in the CACI.[188] Mrs. Humphries also indicated that her desire to pursue a degree in psychology was threatened by her inclusion in the CACI, because portions of her psychology coursework included working in a child care program, which in turn would require a CACI background check. The court found that this evidence implicated the Humphries' rights to procedural due process.

The court determined that listing in the CACI deprived the Humphries of rights secured by the Constitution and laws of the United States. Specifically, the stigma of being listed in the CACI, along with the statutory consequences, including the inability to obtain certain licenses or

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[184] See Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 8.

[185] *Humphries*, *supra*, 554 F.3d 1170, at p. 1180.

[186] *Ibid*.

[187] *Id*, at pp. 1181-1182.

[188] *Id*, at p. 1183.

credentials, constituted a violation of protected liberty interests.[189] The court held that a "lack of any meaningful, guaranteed procedural safeguards before the initial placement on CACI combined with the lack of any effective process for removal from CACI violate[d] the Humphries' due process rights." Because certain licensing agencies are required to consult the CACI before issuing licenses, "the CACI cease[s] to be a mere investigatory tool, [and becomes], in substance, a judgment against those listed."[190] The court did not seek to dictate exactly what due process is required, but stated:

> At the very least, however, California must promptly notify a suspected child abuser that his name is on the CACI and provide "some kind of hearing" by which he can challenge his inclusion. *See Goss v. Lopez*, 419 U.S. 565, 578, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975); Henry J. Friendly, "*Some Kind of Hearing*," 123 U. Pa. L.Rev. 1267 (1975) (discussing the various forms that a hearing can take). The opportunity to be heard on the allegations ought to be before someone other than the official who initially investigated the allegation and reported the name for inclusion on the CACI, and the standards for retaining a name on the CACI after it has been challenged ought to be carefully spelled out.[191]

Based on the court's reasoning in *Humphries*, it is clear that some due process is owed to those listed in the CACI, to ensure that the listings are not erroneous, and that an innocent person is not unduly damaged. At a minimum, due process requires notice, and an opportunity to be heard before an impartial fact finder.

b. <u>Due process protections recognized in *Humphries* were incorporated in the subsequent amendments to the test claim statutes</u>.

After and in accordance with *Humphries*, the Legislature sought to include basic due process protections in the statutes that make up CANRA. These requirements are declaratory of existing federal and state due process protections and do not require a new test claim decision. Due process protections identified in Humphries and codified by the Legislature are reasonably necessary to comply with the mandate; moreover, the amendments made to section 11169 are implementing existing constitutional requirements triggered by the test claim statutes, not imposing additional mandated activities.

Subdivisions (d) through (g) were added to section 11169 by Statutes 2011, chapter 468, as follows:

> (d) Subject to subdivision (e), any person who is listed on the CACI has the right to a hearing before the agency that requested his or her inclusion in the CACI to challenge his or her listing on the CACI. The hearing shall satisfy due process requirements. It is the intent of the Legislature that the hearing provided for by this subdivision shall not be construed to be inconsistent with hearing proceedings available to persons who have been listed on the CACI prior to the enactment of the act that added this subdivision.

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[189] *Id*, at pp. 1185-1189.

[190] *Humphries*, *supra*, 554 F.3d 1170, at p. 1201.

[191] *Ibid*.

(e) A hearing requested pursuant to subdivision (d) shall be denied when a court of competent jurisdiction has determined that suspected child abuse or neglect has occurred, or when the allegation of child abuse or neglect resulting in the referral to the CACI is pending before the court. A person who is listed on the CACI and has been denied a hearing pursuant to this subdivision has a right to a hearing pursuant to subdivision (d) only if the court's jurisdiction has terminated, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and a hearing has not previously been provided to the listed person pursuant to subdivision (d).

(f) Any person listed in the CACI who has reached 100 years of age shall have his or her listing removed from the CACI.

(g) If, after a hearing pursuant to subdivision (d) or a court proceeding described in subdivision (e), it is determined the person's CACI listing was based on a report that was not substantiated, the agency shall notify the Department of Justice of that result and the department shall remove that person's name from the CACI.

These changes, recognizing that "CACI has been the subject of substantial litigation over the years, principally involving issues related to due process of law," are intended "to address the issues raised in previous lawsuits" regarding the constitutionality of the CACI.[192] The Legislative Counsel's digest preceding the bill provides as follows:

> Existing law charges the Department of Justice with maintaining CACI and requires that the index be continually updated by the department and not contain any reports that are determined to be unfounded.
>
> This bill would instead provide that only information from reports that are reported as substantiated would be filed, and all other determinations would be removed from the centralized list. The bill would also provide that any person who is listed on the CACI has the right to an agency hearing, as specified, to challenge his or her listing on the CACI. The bill would require the hearing to meet due process requirements. The bill would also specify the circumstances under which the hearing may be denied. The bill would further provide that a person who is listed on the CACI has a right to that hearing if the court's jurisdiction terminates, the court has not made a finding concerning whether the suspected child abuse or neglect was substantiated, and that hearing has not been provided previously to the listed person. After that hearing or a court proceeding, if it is determined that the person's CACI listing was based on a report that was not substantiated, the agency would be required to notify the department of that result and the department shall remove that person's name from the CACI.

The Committee analysis also states that "[t]he provisions of this bill seeking to ensure that CACI is operated in a constitutional manner are likely to result in significant future litigation-related cost savings potentially in the millions of dollars to the DOJ and local agencies." While this statement captures the intent of cost-savings, it also recognizes the intent to alter the operation of the CACI to achieve consistency with constitutional requirements. Therefore the Commission

[192] Exhibit X, Senate Committee Analysis, AB 717.

finds that the amendments to section 11170, effected by Statutes 2011, chapter 468, are not newly mandated requirements, but are codifying and clarifying existing federal and state constitutional requirements.

c. Due process protections required under the Constitution of the United States, or under the Constitution and laws of the State of California, when triggered by state-mandated activities, are reimbursable pursuant to Article XIII B, section 6.

In *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, the California Supreme Court held that all due process procedures and costs resulting from expulsions made mandatory by the test claim statute were reimbursable, whether arising from federal law or state law.[193] Education Code section 48915, in pertinent part, "(1) *compelled* a school principal to *immediately suspend* any student found to be in possession of a firearm at school or at a school activity off school grounds, and (2) *mandated* a recommendation to the school district governing board that the student be expelled."[194] The court noted that "whenever expulsion is recommended [under state law] a student has a right to an expulsion hearing." The court held, "[a]ccordingly, it is appropriate to characterize the former provision as *mandating* immediate suspension, a recommendation of expulsion, *and hence, an expulsion hearing.*"[195]

The Commission, in its test claim statement of decision prior to *San Diego Unified*, had excepted the federal due process requirements from reimbursement pursuant to Government Code section 17556, finding that only the due process requirements imposed by the test claim statute that were in excess of the federal requirements should be reimbursable.[196] The court disagreed, finding that section 17556 was not applicable to the facts; that Education Code section 48915, providing for mandatory expulsions in certain situations, does not "implement federal law," and therefore due process costs arising from both federal and state law and Constitutions are reimbursable when an expulsion recommendation is made mandatory under state statute.[197]

d. The one-time development of due process procedures, as well as the ongoing provision of due process protections to listed individuals, are approved.

Due process procedures were not expressly approved in the test claim statement of decision, nor are due process requirements found in the language of the test claim statutes, as pled. Rather the *Humphries* decision recognized a due process right inherent in the existence and application of the CACI, and the Legislature subsequently amended the code to include due process protections. *San Diego Unified* is in accord, in that it makes clear that due process procedures triggered by state-mandated activities are reimbursable whether arising under state or federal law

[193] Discretionary expulsions were held not to give rise to reimbursable costs, including due process procedures triggered.

[194] *San Diego Unified*, *supra*, at p. 869.

[195] *Id*, at p. 870.

[196] *Id*, at pp. 872-873.

[197] *Id*, at p. 881.

or Constitution.[198] The Commission now must accept the courts' findings and hold that due process protections triggered by test claim statutes surrounding the CACI are reimbursable.

The court in *Humphries* directed the state to institute "some kind of hearing" process to provide a remedy for those who would challenge their listing in the CACI, and provided that the hearing must be before someone other than the person who performed the investigation.[199] The very fact that the Humphries' were forced to sue (as well as the amendments to the code following thereafter) demonstrates that it is unlikely that adequate due process procedures existed prior to that 2009 case, at least in Los Angeles County. The Department of Social Services has adopted procedures that appear at first glance to satisfy due process, as interpreted by the court in *Humphries*, but those measures, adopted in settlement of another due process case, only extended to county welfare departments at that time, and were not required of law enforcement agencies. This is yet another reason for the amendments made in Statutes 2011, chapter 468 (AB 717).[200]

Based on the court's express finding that due process protections are owed, reimbursement for the development and implementation of those procedures is reasonably necessary to carry out the mandate. However, the claimant has submitted no evidence that due process procedures must be continually "develop[ed] *and* maintain[ed]." Therefore, approval of this activity is limited to a one-time activity of developing procedures for this program, consistent with the Legislature's expression of the constitutional requirements, rather than an on-going activity including "maintain[ing]" due process procedures.

The actual provision of due process protections to individuals who seek to challenge being listed in the CACI is reimbursable, based on the holdings of *San Diego Unified* and *Humphries*, *supra*. Because listing in the CACI triggers 14th Amendment due process protections, the agency initiating the listing must provide sufficient due process to protect the rights of the individual against unconstitutional deprivation of a protected liberty interest. The cost of that process is thus reasonably necessary to carry out the mandate. Given that due process hearings will be required any time an individual seeks to challenge his or her inclusion in the CACI, this must be considered a reasonably necessary ongoing activity.

Accordingly, and consistently with the implications of the *Humphries* decision, and *San Diego Unified*, and the subsequent amendments to section 11169, the Commission finds that one-time development and implementation of due process procedures is approved for reimbursement in these parameters and guidelines. The Commission also approves ongoing provision of due process protections to individuals seeking to challenge their listing in the CACI, including notice and a hearing. Both of these activities are eligible for reimbursement by a showing of actual costs, and will require contemporaneous source documentation, as provided in the parameters and guidelines. It is unclear how many, if any, of the eligible claimants provided the mandated due process protections prior to the *Humphrey's* decision in 2009 or the amendment of 11169 in 2011 and what the scope of those protections might have been. However, any jurisdiction that did actually perform the mandated due process activities is eligible to claim for their actual costs incurred beginning July 1, 1999.

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[198] *San Diego Unified*, *supra*, at p. 881.

[199] *Humphries*, *supra*, 554 F.3d 1170, at p. 1201.

[200] Exhibit X, Senate Committee Analysis, AB 717.

7. Requirements of County Welfare Departments Proposed by Claimant

The claimant has proposed reimbursement for reporting activities of county welfare departments, some of which are not supported on the basis of the record, and exceed the scope of the mandate. The claimant proposes reimbursement for the following reporting activities for county welfare departments:

> *1. Completion of the Child Abuse Summary Report (SS 8583) form [Standard time is 22 minutes]*
>
> *2. Completion of the Suspected Child Abuse Report (SS 8572) form [Standard time is 23 minutes]*
>
> *3. Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form [Standard time is 13 minutes]*
>
> *4. Filing copies of the SS 8583 and SS 8572 forms with a copy of the investigative report [Standard time is 22 minutes]*
>
> *5. Response to DOJ inquires [Standard time is 9 minutes]*.[201]

The Commission finds that preparing and submitting the Child Abuse Summary Report form (SS 8583) is expressly approved in the test claim statement of decision, as part and parcel of the completion of an investigation and forwarding of reports to DOJ. The parameters and guidelines reflect this activity, as discussed above, and it is not necessary to further analyze this activity here.

Completion of a "Notice of Child Abuse Central Index Listing (SOC 832) form" is discussed above at Part 4., with respect to providing notice to a suspected abuser that he or she has been listed in the index. The Commission finds, as stated above, that the completion of the form is a reasonable method by which to comply with the mandate, and the parameters and guidelines therefore reflect reimbursement for this activity, where applicable.

Additionally, the claimant proposes reimbursement for "[f]iling copies of the SS 8583 and SS 8572 forms with a copy of the investigative report." The Child Abuse Summary Report, form 8583, is the form forwarded to DOJ. The Suspected Child Abuse Report, form 8572, originates with the mandated reporter, and is received by the investigating agency; this is the report that precipitates all reimbursable activities under CANRA. The activity proposed above might be interpreted to include filing copies of the forms with DOJ, but this is not required by DOJ regulations.[202] Therefore, it more likely is intended to mean filing copies of the incoming (8572) and outgoing (8583) forms with the investigating agency's investigation report, retained by the agency. Retention of these forms is included in the parameters and guidelines language regarding the expressly approved activities regarding retention of records of suspected child abuse at Part 5., above.

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[201] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 27.

[202] California Code of Regulations, title 11, section 903 (Register 98, No. 29) [requirement to report to DOJ using Form 8583, but no requirement to retain a copy of the Form 8583].

The remaining activities cited above are not supported by evidence in the record. In particular, the Suspected Child Abuse Report form (SS 8572) is the same form employed by mandated reporters, individuals whose activities are not subject to reimbursement. It is not clear based on the evidence in the record why county welfare *agencies* should be reimbursed for completing the Child Abuse Summary Report form, while county welfare *employees* would be subject, as individuals, based on their vocation, to the mandatory reporting requirements, which are not reimbursable. In other words, a psychologist, or doctor, would be considered a mandatory reporter by vocation and training, whether employed by the county, or some private entity. Therefore, as was explicitly found in the test claim statement of decision, the mandated reporter activity, to complete the Child Abuse Summary Report form, is not unique to government, and does not impose a reimbursable new program or higher level of service.[203] Submittal of this form to the child protective agency is the triggering event for the mandate—without it there are no mandated activities.

Furthermore, it is unclear from what approved activity in the test claim statement of decision the claimant derives the alleged reasonably necessary activity "Response to DOJ inquiries (9 min)." It could be asserted that responding to DOJ inquiries is a reasonably necessary activity, but the claimant has provided no explanation as to what would give rise to a DOJ inquiry, nor any explanation of what inquiries are proposed to be reimbursable.[204] DOJ does not take any responsibility for the accuracy of the information maintained in the index: "DOJ does not conduct an investigation to verify the accuracy of the information submitted nor does it investigate the quality or accuracy of the abuse or severe neglect investigation conducted by the submitting agency."[205] DOJ serves only as a repository of information, based on the language of the test claim statutes. Therefore it is unknown what sort of inquiry DOJ might undertake to make. The claimant has provided no evidence in the record explaining what a "DOJ inquiry" entails, and therefore this activity must be denied.

Based on the foregoing, the Commission finds that the preparing and submitting the Child Abuse Summary Report, form SS 8583, retaining copies of the Child Abuse Summary Report form SS 8583 and the Suspected Child Abuse Report form SS 8572, and the completion of the Notice of Child Abuse Central Index Listing, form SOC 832, are approved elsewhere in this analysis, and incorporated within the parameters and guidelines, as appropriate. The remaining proposed activities are denied.

C. Claim Preparation and RRM Proposal (Section V. of Proposed Parameters and Guidelines)

The claimant has proposed standard times RRMs for specified activities, including investigative activities performed by law enforcement agencies, and complying with reporting and notice

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[203] Exhibit A, Test Claim Statement of Decision, at pp. 15-16 [Duties alleged under Penal Code section11166 "are not required of local entities, but of mandated reporters as individual citizens," and are therefore not a reimbursable state-mandated new program or higher level of service].

[204] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, at pp. 23-24.

[205] Code of Regulations, title 11, section 902 (Reg. 2002, No. 17; Reg. 2006, No. 19; Reg. 2010, No. 2).

requirements by county welfare departments. The claimant's proposed RRMs will be incorporated into the discussion below, where relevant.

For the following reasons, the Commission finds that the evidence and exhibits submitted are not sufficient to support adoption of the proposed RRMs, consistent with the constitutional and statutory requirements of RRMs, and of Commission decisions generally. While an RRM proposal need not be based on actual cost data, nor precisely reimburse every dollar to every claimant, an RRM must reasonably reimburse claimants for the costs mandated by the state, and an RRM proposal must be based on substantial evidence, like any other Commission decision. Here, as discussed below, there is not sufficient evidence in the record to meet the substantial evidence standard, and to adopt the RRMs for reimbursement on the basis of this record.

Thus, the parameters and guidelines include the Commission's standard language for actual cost reimbursement in Section V, requiring documentation to support the claims for reimbursement.

1. The Purpose of an RRM is to Reimburse Local Government Efficiently and Simply, with Minimal Auditing and Documentation Required.

a. <u>The RRM proposal meets the minimal statutory requirements for adoption of an RRM.</u>

The reimbursement obligation of article XIII B, section 6 was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."[206] Section 17561(a) states: "[t]he state *shall* reimburse each local agency and school district for *all* 'costs mandated by the state,' as defined in Section 17514."[207] The courts have interpreted the constitutional and statutory scheme as requiring "full" payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.[208] The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.[209]

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[206] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

[207] Government Code section 17561 (Stats. 2009, ch. 4, § 4 (SB3X 8)) [emphasis added].

[208] *CSBA v. State of California* (*CSBA II*) (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in "increased actual expenditures." The court further noted the statutory mandates process that refers to the reimbursement of "actual costs incurred."

See also, Government Code sections 17522 defining "annual reimbursement claim" to mean a claim for "actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller's audit to verify the "actual amount of the mandated costs."

[209] Government Code section 17500 et seq.

Statutory provision for the adoption of an RRM was originally enacted in 2004, and amended in 2007 to promote greater flexibility.[210] Former section 17518.5 provided that an RRM must "meet the following conditions:"

> (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
>
> (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.[211]

The LAO found in a 2007 report that measurement of marginal costs was "complex," and that documentation requirements made it difficult to file claims and led to disputes with the Controller. LAO's recommendation to address these issues was to "[e]xpand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute."[212] The LAO's recommendations were implemented in Statutes 2007, chapter 329 (AB 1222). Section 17518.5 now defines an RRM as follows:

> (a) "Reasonable reimbursement methodology" means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
>
> (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or projections of other local costs.
>
> (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost efficient manner.
>
> (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other

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[210] Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856); amended by Stats. 2007, ch. 329 (AB 1222)).

[211] Government Code section 17518.5 (Stats. 2004, ch. 890 § 6 (AB 2856)).

[212] Exhibit X, "State-Local Working Group Proposal to Improve the Mandate Process," Legislative Analyst's Office, June 21, 2007, page 3. See also, Assembly Bill Analysis of AB 2856 (2004), concurrence in Senate Amendments of August 17, 2004; Assembly Bill Analysis of AB 1222 (2007), concurrence in Senate Amendments of September 4, 2007. These bill analyses identify the purpose of the RRM process is to "streamline the documentation and reporting process for mandates."; *Kaufman & Broad Communities, Inch. v. Performance Plastering* (Cal. Ct. App. 3d Dist. 2005) 133 Cal.App.4th 26, at pp. 31-32 [Reports of the Legislative Analyst's Office may properly be considered, as legislative history, to determine the legislative intent of a statute].

approximations of local costs mandated by the state, rather than detailed documentation of actual costs . . . .

(e) A reasonable reimbursement methodology may be developed by any of the following:

(1) The Department of Finance.

(2) The Controller.

(3) An affected state agency.

(4) A claimant.

(5) An interested party. [213]

An RRM diverges from the traditional requirement of supporting a reimbursement claim with detailed documentation of actual costs incurred and, instead, applies a standard formula or single standard unit cost, based on approximations of local costs mandated by the state. A unit cost or, in this case, unit times, based on approximations or other projections may result in some entities receiving more than their actual costs incurred to comply with a mandated program, and some receiving less. As the following analysis will demonstrate, the statutory requirements are highly flexible, but whether approval of RRM is legally supportable turns on whether it reasonably reimburses eligible claimants for their actual costs and whether it is supported by substantial evidence in the record.

A unit cost must represent a reasonable approximation of the costs incurred by eligible claimants to implement the state-mandated program, in order to comply with the constitutional requirement that *all costs mandated by the state* be reimbursed to a local government entity. In certain circumstances, a unit cost based on a significant or large variation of costs reported may not reasonably represent the costs incurred by eligible claimants and, thus, may not comply with the requirements of article XIII B, section 6 of the California Constitution. On the other hand, given the purpose of the RRM, to "balance accuracy with simplicity," some degree of variation in costs is permissible.[214]

The statutory requirements to adopt an RRM are minimal, and very broad. Government Code section 17518.5, as amended in 2007, eliminates both the prior rule that 50% of eligible claimants have their costs fully offset, and the rule that the total amount to be reimbursed under an RRM must be equal to the total statewide cost estimate. The new statute provides less stringent requirements for documentation of costs, and less burdensome measuring of the marginal costs of higher levels of service.[215] In other words, rather than providing rigid requirements or elements to which an RRM proposal for adoption must adhere, the amended statute focuses on the *sources of information for the development of an RRM*, and only requires

[213] Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

[214] Government Code section 17557 (Stats. 2010, ch. 719 (SB 856) § 32).

[215] *Kaufman & Broad Communities*, *supra*, 133 Cal.App.4th 26, at pp. 31-32 [LAO reports may be relied upon as evidence of legislative history].

that the end result "balances accuracy with simplicity."[216] The Commission's regulations which implement the RRM statute (section 17518.5) also focus on the information to be used, rather than any specific degree of precision or accuracy necessary.[217] Implicit, however, is the constitutional requirement that the end result must reasonably reimburse claimants for their actual mandated costs, as required by article XIII B, section 6.

The statute provides that detailed, actual cost information is not required to develop an RRM. Section 17518.5 provides that an RRM "shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or *other projections of other local costs*."[218] The statute does not *require* any one of these options; it merely outlines these as *possible sources* for the development of evidence to support an RRM. "[C]ost information from a representative sample of eligible claimants" is only *one source of evidence* upon which to base an RRM, along with "information provided by associations of local agencies and school districts, or *other projections* of local costs."[219] Thus, whether the sample size, or the constitution of the sample, is representative is not dispositive on the question whether an RRM may be adopted. Moreover, section 1183.13 of the Commission's regulations provides that a "representative sample of claimants does not include eligible claimants *that do not respond to surveys or otherwise participate* in submitting cost data."[220]

In addition, the statute provides that an RRM "[w]henever possible… shall be based on general allocation formulas, uniform cost allowances, and *other approximations of local costs* mandated by the state, *rather than detailed documentation* of actual costs."[221]

And finally, section 17518.5(c) provides that an RRM "shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner." The section does not require that an RRM *address* such variation, or that it *mitigate* or *eliminate* such variation.

Here, the law enforcement surveys upon which the RRMs are based were responded to by twelve law enforcement agencies that together "serve over half the state's population."[222] The county welfare surveys were responded to by eight counties, serving "well over 50 percent of the State's population."[223] The law enforcement surveys were developed by the Los Angeles County Sheriff's Department, in cooperation with the California State Association of Counties and the

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[216] Government Code section 17557.

[217] Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)); Code of Regulations, title 2, section 1183.131.

[218] Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

[219] Government Code section 17518.5 (Stats. 2007, ch. 329 (AB 1222) § 1) [emphasis added].

[220] Code of Regulations, Title 2, section 1183.13 (Register 2008, No. 17).

[221] Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

[222] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Narrative at p. 11.

[223] *Id*, at p. 19.

League of California Cities.[224] The county welfare department surveys were developed by "a core team of [Los Angeles] County staff, California Welfare Directors Association staff, and State Department of Social Services staff."

The RRM proposal includes standard times RRMs for specified activities. The survey data upon which the RRMs are based does not require actual dollar amounts for the specified activities, but rather focuses on the time expended for those activities, and bases reimbursement on those standard times applied to an individual claimant's "blended productive hourly rate, in accordance with long established State Controller's Office Instructions."[225] In this respect the RRMs are not based on "detailed documentation of actual costs," but rather on a formula, based on survey data, or on what might be characterized as "other approximations."[226] In rebuttal comments submitted in response to agency and other party comments, the claimant submitted a second revised proposed parameters and guidelines, which narrows the activities for which the claimant seeks reimbursement under the RRMs, but the surveys upon which the standard times RRMs are based are the same, and the analysis herein is therefore unchanged.[227]

Thus, the claimant has submitted survey results from local agencies who responded to the survey request, and who represent over half the state's population. The Commission may find that this constitutes a representative sample, in accordance with the ordinary meanings of "representative" and "sample," and with the definition found in the Commission's regulations, if the survey results are supported by admissible evidence in the record.[228]

In addition, the claimant has submitted a standard times RRM, which could easily be characterized as a "general allocation formula…[or] other approximations of local costs." To the extent that the RRM is based on time data rather than cost data, it is consistent with the minimal requirements of the statute.[229]

Finally, although hourly rates of pay and benefits might vary from one county or city to another, it is not necessary to examine whether and to what extent that variation impacts the total costs of implementing the mandate, because the application of "standard times" to the hourly rates of personnel in different cities and counties will account for the variation, as long as the times themselves are defensible. In this way a standard times proposal does address, and arguably

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[224] Id, at p. 2; See also, Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Declaration of Suzie Ferrell, at p. 6.

[225] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Narrative at pp. 11-12.

[226] Government Code section 17518.5 (Stats. 2007, ch. 329 (AB 1222)).

[227] See Exhibit F, Claimant Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 14-18 [The re-evaluation of the law enforcement RRMs "focused on whether a specific activity should remain in the RRM or be removed. Fortunately, a new time survey of specific activities was not necessary as the standard time component for each activity was discernable."].

[228] Exhibit X, Webster's New International Dictionary, ["representative," and "sample," defined]. See also Code of Regulations, Title 2, section 1183.13.

[229] *Ibid*.

mitigates, any variation in costs among local government, to the extent that personnel costs constitute a significant variable.

Based on the foregoing, the Commission finds that the data submitted, and the proposal based on those data, do "consider the variation" in local costs as required, in order to arrive at the unit times proposed, and otherwise meet the minimal requirements of section 17518.5.

b. The RRM proposal is not supported by substantial evidence in the record.

Despite the findings that the RRM broadly meets the requirements of section 17518.5, statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole;[230] when the Legislature added section 17518.5 to the Government Code, it did not change the existing requirement in section 17559 that all of the Commission's findings be based on substantial evidence in the record. In 2010, the Commission clarified its regulations to specifically identify the quasi-judicial matters that are subject to these evidentiary rules, including proposed parameters and guidelines and requests to amend parameters and guidelines.[231] Thus, the plain language of the statutory and regulatory mandates scheme requires substantial evidence in the record to support the adoption of an RRM.

Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;[232] and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[233] The California Supreme Court has stated that "[o]bviously the word [substantial] cannot be deemed synonymous with 'any' evidence."[234] Therefore the second of the above definitions is

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[230] *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

[231] The courts, in recent lawsuits dealing with questions of fact, have determined that the Commission's conclusions were not supported by any evidence in the record and, thus, the Commission's decisions were determined invalid pursuant to Government Code section 17559 and Code of Civil Procedure section 1094.5. (See, *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355 [Peace Officer Procedural Bill of Rights, on the issue of practical compulsion]; *State of California Department of Finance, State Water Resources Control Board, et al. v. Commission on State Mandates and County of San Diego, et al.,* Sacramento County Superior Court, Case No. 34-2010-80000604 [Discharge of Stormwater Runoff, on the issue of whether the permit requirements are considered to fall within the Maximum Extent Practicable standard of federal law]; *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al.,* Los Angeles County Superior Court, Case No. BS130730 [Municipal Storm Water and Urban Runoff Discharges, on the issue of whether the permit requirements are considered to fall within the Maximum Extent Practicable standard of federal law]).

[232] *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5th Dist. 1998) 202 Cal.App.3d 791, at p. 805.

[233] *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

[234] *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

appropriate to the standard for overturning and Commission decision in accordance with section 17559: relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is not submitted by a party; it is a standard of review, upon which a reviewing court will uphold the determinations of a lower court, or in this context, the Commission, if those findings are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is "obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor."[235]

The Commission is not required to observe strict evidentiary rules, but its decisions must be reasonable, and grounded in fairness. Section 1187.5(a) of the Commission's regulations provides that when exercising the quasi-judicial functions of the Commission, "[a]ny relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs."[236] This regulation is borrowed from the evidentiary requirements of the Administrative Procedures Act, which contains substantially the same language.[237] In addition, both the Commission's regulations and the Government Code permit the use of hearsay evidence and declarations "for the purpose of supplementing or explaining other evidence but [hearsay] shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action."[238]

Therefore, in keeping with the applicable evidentiary standards provided by the statutes and regulations, and in an attempt to harmonize the case law with the clear import of statute and regulation, the following standards emerge: the Commission's decisions must be supported by "substantial evidence" under section 17559, but the conduct of hearings need not adhere to strict evidence rules pursuant to section 1187.5 of the Commission's regulations and Government Code section 11513(c); any relevant non-repetitive evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely; hearsay evidence may be used to supplement or explain, although it shall not be sufficient to support a finding unless admissible over objection in civil actions.[239] Under section 11514, as referenced in the Commission's regulations, an affidavit or declaration may be "given the same effect as if the affiant had testified orally," if properly noticed and an opportunity to cross-examine the affiant is given.[240] Expert testimony, in the form of an affidavit, would be admissible if the Commission finds a witness qualified by special skill or training, and the testimony (here, declaration) is helpful to the Commission.[241] Furthermore, surveys of eligible claimants as a method of gathering cost

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[235] *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

[236] Code of Regulations, Title 2, section 1187.5.

[237] Government Code section 11513.

[238] Code of Regulations, title 2, section 1187.5; Government Code section 11514 [providing for use of affidavits in lieu of testimony].

[239] California Code of Regulations, Title 2, section 1187.5.

[240] Government Code section 11514(a) (Stats. 1947, ch. 491 § 6).

[241] Evidence Code sections 720; 801 (Stats. 1965, ch. 299 § 2).

data are contemplated by the statute and the regulations as a viable form of evidence, but they must be admissible under the Commission's regulations and the evidence rules, as discussed.[242]

The claimant has proposed standard times RRMs for investigative activities performed by law enforcement, and for reporting and notice activities performed by county welfare departments, as follows:

> Level - 1 No Child Abuse Based on Preliminary Information (Suspected Child Abuse Report (SCAR) or Call-for-Service).
>
> All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and closed with no further action taken if no child abuse is indicated based on information received by the agency.
>
> The standard time for Level 1 is 102 minutes.
>
> Level 2 - Patrol Officer Investigation, No Child Abuse
>
> All child abuse reports, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, investigated and if child abuse is not suspected after a patrol officer's investigation, the incident must be documented and closed.
>
> The standard time for Level 2 is 268 minutes.
>
> Level 3 - Reported CACI Investigation
>
> All child abuse allegations, whether from mandated reporters, the public or a cross-reporting agency department, must be logged in, reviewed, and investigated. If suspected child abuse has not been ruled out after a patrol officer's investigation, an in depth investigation must be completed to determine if the child abuse is "unfounded," "inconclusive," or "substantiated."
>
> If child abuse is "substantiated"' or "inconclusive," it must be reported to the State Department of Justice. Before it is reported, certain Level 3 steps, which go beyond those found in Level 1 and 2, must be performed.
>
> The standard time for Level 3 is 838 minutes.
>
> Actual cost reimbursement is available for additional services not found in the Level 3 RRM. These services are described in IV.C(D) below.
>
> The standard times for county welfare agencies are:
>
> 1. Completion of the Child Abuse Summary Report (SS 8583) form
>
> The standard time is 22 minutes.
>
> 2. Completion of the Suspected Child Abuse Report (SS 8572) form.
>
> The standard time is 23 minutes.

[242] Government Code section 17518.5; Code of Regulations, Title 2, section 1183.13.

3. Completion of the Notice of Child Abuse Central Index Listing (SOC 832) form.

The standard time is 13 minutes.

4. Filing copies of the SS 8583 and SS 8572 forms with a copy of the investigative report.

The standard time is 22 minutes.

5. Response to DOJ inquires.

The standard time is 9 minutes.[243]

Based on the record here, the Commission does not have substantial evidence upon which to base a decision to adopt the standard times RRMs proposed for law enforcement.

The declarations of Suzie Ferrell and Daniel Scott state that the law enforcement surveys were developed on the basis of the investigative activities necessary to complete the ICAN mandated activities, and that the activities included in the surveys are "reasonably necessary in conducting ICAN investigations, preparing ICAN reports, and performing other ICAN required duties."[244] The Ferrell declaration also states that "it is my information and belief that the average or standard time for each ICAN step…is based on a representative sample of law enforcement agencies." In an additional declaration attached to the claimant's rebuttal comments and second revised proposed parameters and guidelines, Ms. Ferrell states, with slightly more specificity, that "the replacement RRM, found in Exhibit 1 of this filing, contains only those activities that are reasonably necessary in order to complete the state 'Child Abuse Investigation Report' Form SS 8583."[245]

As discussed above with respect to reimbursable activities, these proposed RRMs, if supported with substantial evidence, could be only partially approved, despite the assertions of Mr. Scott and Ms. Ferrell, because the activities underpinning the proposed RRMs exceed the scope of the mandate, and the scope of what is reimbursable under article XIII B, section 6. Notwithstanding their information and belief that the steps described in the law enforcement RRMs are necessary to complete ICAN investigations, the activities beyond investigation by patrol officers for purposes of preparing the report required by section 11169, as discussed, are not reimbursable, because those activities exceed the scope of what was approved in the test claim statement of decision; they exceed the scope of what is reasonably necessary to carry out the mandate (i.e., to determine whether a report is unfounded); and they exceed the scope of what is reimbursable under article XIII B, section 6 and Government Code section 17556.[246]

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[243] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at pp. 26-27.

[244] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 1, Declaration of Suzie Ferrell, at p. 6.

[245] Exhibit F, Claimant's Rebuttal Comments and Second Revised Proposed Parameters and Guidelines, at p. 47.

[246] See discussion above at section (B.)(3.), p. 34 and following.

Along with the declarations described above, the claimant has submitted summary survey results for the law enforcement activities that the claimant seeks to include in the law enforcement RRMs. Those summary survey results describe how much time should be assigned to each step in the investigation for law enforcement agencies. However, as discussed above, the reimbursement of those activities is limited to the activities and level of investigation required for the purpose of completing the Form 8583. Anything more, as analyzed above, would provide reimbursement for the costs of mandated reporter activities, or a criminal investigation; and to reimburse law enforcement agencies for activities beyond those approved for county welfare departments: these are not reimbursable activities. Moreover, nowhere in the claimant's submissions are the actual raw data found, nor any spreadsheets or other summaries that detail how the standard times RRMs were calculated; therefore it cannot be determined whether there is substantial evidence to support the costs claimed. In the claimant's rebuttal comments and second revised proposed parameters and guidelines, the times for each activity are identified individually, as follows:

Duty	Time in Minutes
Officer receives, prints, or transcribes child abuse reports (SCARs or calls-for-service) from the public, cross-reporting agency department, and mandated reporters	15
Officer processes child abuse report into agency's tracking system	7
Officer reviews report and determines based on the SCAR or call-for-service that no further investigation is required	33
Officer's findings are entered into agency's system	26
Supervising officer reviews investigation findings and approves closure of report indicating no child abuse	21
Totals for Level 1	102

Because the claimant's proposal identifies individual times for each activity, non-reimbursable activities *could* potentially be eliminated in an adopted RRM. However there remains no evidence to support the standard times requested, other than the conclusory declarations submitted into evidence. In addition, there is no evidence provided that these activities are utilized other than in the County of Los Angeles. In comments submitted in response to the draft staff analysis, the claimant submitted the declaration of Mr. John Langstaff, "Project and Program Manager of the E-SCARS project." Mr. Langstaff declares that the "specialized software" for cross-reporting and tracking child abuse reports utilized by the County is "a more reliable method of cross-reporting" than relying on fax machines. However, Mr. Langstaff does not state, nor does any other evidence in the record indicate, whether any other county or jurisdiction utilizes the E-SCARS system, or any other electronic tracking system. The standard times proposed above presume that the investigating patrol officer utilizes the agency's tracking system, but there is no support in the record for that presumption with respect to other jurisdictions. Therefore the RRMs, based upon inadmissible hearsay, and including activities that are not approved and may or may not be utilized in other jurisdictions, are not supported by substantial evidence in the record and cannot be approved by the Commission.

Based on the analysis above, the law enforcement RRMs are denied.

Moreover, just as with the law enforcement standard times proposed, the claimant has submitted only summary survey results for county welfare departments' activities, along with the survey questions distributed to eligible claimants.[247] As discussed above, the surveys were returned by eight eligible claimants, representing, according to the claimant's evidence, more than fifty percent of the state's population. But nowhere in the claimant's submissions is there any evidence of the raw data returned. Only the conclusions are stated, in the form of standard times calculated by the claimant. This evidence is not sufficient in itself to support the Commission's decision to approve the proposed RRMs.

Based on the foregoing, proposed RRMs for county welfare departments are denied.

D. Offsetting Revenues and Reimbursements (Section VII. of Proposed Parameters and Guidelines)

The Commission's regulations require parameters and guidelines to identify offsetting revenues that may apply to the program as follows:

i. Dedicated state and federal funds appropriated for this program

ii. Non-local agency funds dedicated for this program.

iii. Local agency's general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.[248]

These items, required to be identified, do not undermine the Commission's finding that a program is reimbursable unless there is also a finding that the funding is sufficient to cover the costs of the program under section 17556(e), which is not the case here.

In addition, parameters and guidelines for *all* programs recently adopted state substantially as follows:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

Therefore, even if the parameters and guidelines do not specifically highlight required or potential offsetting revenues, the Controller has authority to reduce reimbursement when other non-tax revenues are applied to mandated costs.

Based on the comments of parties and interested parties, and the plain language of the 2011 Realignment statutes, the Commission determines in the analysis below that non-local funds for child welfare services are identified as potentially offsetting revenue, but 2011 Realignment Funds are not offsetting revenue for purposes of ICAN mandated activities.

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[247] Exhibit B, Claimant's Revised Proposed Parameters and Guidelines, Exhibit 10, Child Abuse and Neglect Reporting Act Time Study Survey Questions, at pp. 2-3.

[248] Code of Regulations, Title 2, section 1183.1 (Register 2005, No. 36).

Here, as noted above, DOF and CDSS raised in their comments on the draft staff analysis an issue of offsetting revenue, and suggested that funding provided by the state, both prior to and including in the 2011 realignment, and possibly the language of article XIII, section 36 of the California Constitution might limit reimbursement going forward for the ICAN activities.[249] Specifically, CDSS suggested that "until the 2011 realignment of child welfare services, on the child welfare side counties have received significant state funding for the activities of social workers, for whom many of the activities identified in this mandate is [*sic*] a core function of their work." CDSS went on to assert that "[w]e also would expect the Commission to consider the implications of the realignment agreements' statutory and constitutional changes in any reimbursable cost estimates beyond 2011." And CDSS suggested as well that "the Commission should consider the revenues received by counties as a result of the 1991-92 Realignment of Child Welfare Services Programs (AB 948 Chapter 91 (1991)) as a potential offset to county costs for mandated activities."[250]

DOF asserted, in its comments on the draft proposed statement of decision, that "to the extent that 2011 Realignment funds [counties] for conducting ICAN activities, under Article XIII, section 36 of the California Constitution…the departments are required to conduct the mandated activities only insofar as funding is provided by 2011 Realignment [*sic*]."[251]

In response to these comments, Commission staff issued a request for comments on this new substantive issue.[252] Specifically, staff requested additional briefing on the following three questions:

1. Are the approved activities under the ICAN statutes (Penal Code sections 11165.9, 11166, 11166.2, 11166.9,[253] 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9)) part of "child abuse prevention, intervention, and treatment services as those costs and services are described in statute and regulation," for purposes of the funding directed to the Child Abuse Prevention Subaccount? And, if so, do such funds constitute a potential or required offset?
2. Does the shift of complete or partial funding responsibility from the state to local governments of existing approved mandated activities result in a mandate "imposed by the 2011 Realignment Legislation" within the meaning of paragraph (3)?

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[249] Exhibit M, CDSS Comments on Draft Proposed Statement of Decision and Parameters and Guidelines; Exhibit L, DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[250] Exhibit M, CDSS Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[251] Exhibit L, DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[252] Exhibit N, Commission Request for Comments.

[253] Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

3. Does article XIII, section 36 require, as suggested by DOF, that an existing mandated program funded under the 2011 Realignment is mandated only to the extent of funding, or does that limitation apply only to future new programs or increases in levels of service related to a funded program?

CSAC responded to the request first, arguing that the approved ICAN activities "are not among the 'public safety services' that are covered by section 36 of article XIII of the California Constitution." CSAC maintains that "[t]here is nothing in Prop. 30 that broadly exempts from reimbursement any program that could potentially fit within the definition of 'public safety services.'" CSAC concludes that under article XIII, section 36, public safety services "are only exempt from reimbursement if they were assigned to local agencies by 2011 Realignment Legislation," and that the mandated ICAN activities were not transferred to local agencies by the 2011 Realignment Legislation, and therefore reimbursement is not affected.[254]

The claimant also responded to the request for comment, arguing that the ICAN mandated activities "were already assigned to local agencies prior to enactment of the 2011 Realignment Legislation," and that the Realignment Legislation "specifically details, by statutory reference, which Public Safety Services responsibilities are assigned to local agencies as a result of that legislation." The claimant concludes that "[b]ecause the ICAN statutes at issue have not been assigned to local agencies pursuant to the 2011 Realignment Legislation, but instead were preexisting mandates, they are not part of the 'child abuse prevention, intervention, and treatment services' referenced in Government Code section 30025(f)(16)(A)(vi)."[255]

And finally, DOF also responded to the request for comments, concluding that "[a]fter deliberating the questions, as well as the ICAN activities," there is no effect on the ICAN mandate resulting from article XIII, section 36. DOF asserts that "there is no statute that identifies and/or describes specific funding for ICAN activities," and that "Finance does not believe that the 2011 Realignment Legislation shifted complete or partial funding responsibility from the state to local government." Finance concludes that article XIII, section 36 only applies to limit reimbursement for "Legislation enacted after September 30th, 2012 that has the overall effect of increasing costs already incurred by a local agency for programs or levels of service mandated by 2011 Realignment Legislation."[256]

a. <u>The non-local share of child welfare services funding is identified as potentially offsetting revenue against costs mandated by the state.</u>

CDSS has suggested that counties receive "significant state funding for the activities of social workers," which, as discussed above, include referring cases of child abuse to DOJ, and conducting investigative activities under the ICAN statutes.[257] CDSS points to the 1991 realignment of health, mental health, and social services, in which the responsibilities of certain programs were shifted from the state to the counties, and the ratio of state to local funding was

[254] Exhibit P, CSAC Response to Commission Request for Comment, at pp. 1-2.

[255] Exhibit Q, County of Los Angeles Response to Commission Request for Comments.

[256] Exhibit R, DOF Response to Commission Request for Comments, at pp. 1-2.

[257] Exhibit M, CDSS Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

shifted, with a corresponding dedicated revenue stream to make up the difference. Prior to the 1991 Realignment, child welfare services funding was made up of 74 percent state and 24 percent local revenues. The 1991 Realignment altered the ratio to 70 percent state funding and 30 percent local funding, while at the same time increasing the state sales tax by one-half percent, and directing a larger share of the VLF revenues to local governments to cover the costs of realignment.[258]

There is no evidence in the record as to exactly what portion of the 70 percent state funding, or the increased local funding, is directed to the ICAN activities, if any, and Statutes 1991, chapter 91 (AB 948) does not specifically cite the prevention of child abuse as a purpose or priority of either source of funds. Accordingly, the Manual of Policies and Procedures, an excerpt of which was included in the claimant's exhibits, and which is cited above with respect to the scope of reimbursable activities, shows that ICAN duties are among those expected of Child Welfare Services agencies, but are not the only charge and expectation of those agencies. In addition, the Manual relies on the Welfare and Institutions Code for authority, rather than the Penal Code sections that impose the ICAN mandated activities. Thus, due to a lack of evidence in the record, the Commission cannot find, as a matter of law, that the non-local funds provided for Child Welfare Services in the 1991 Realignment are sufficient to fund any certain amount or proportion of the costs mandated by the state.

To the extent non-local funds are applied to cover the costs of the mandated activities, the Controller may reduce reimbursement accordingly, consistent with article XIII B, section 6. Based on the foregoing, the Commission finds that non-local funding for child welfare services from July 1, 1999 through June 30, 2011, is identified as potentially offsetting revenues against costs mandated by the state

b. <u>The 2011 realignment does not provide off-setting revenue to this program.</u>

As of November 3, 2004, article XIII B, section 6(c) defines a "mandated new program or higher level of service" as including "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[259] Accordingly, after the 2011 Realignment Legislation was enacted, the LAO issued a report on the realignment, identifying several "pressing implementation issues," including a risk that the programs shifted to the local level could trigger new mandate reimbursement requirements.[260] The principal accomplishments of the realignment were to raise new revenues, and to shift from the state to local governments complete financial responsibility for required programs for which the state previously had complete or partial responsibility.[261] Although no eligible claimant has come forward to file a test claim on the 2011 Realignment statutes pursuant to article XIII B, section 6(c), the LAO expressed an opinion that the statutes facially appear to constitute a mandated new program or higher level of service, and are

[258] Exhibit X, LAO Analysis of 1991 Realignment, at pp. 3; 6.

[259] Adopted by the voters as Proposition 1A, November 2, 2004.

[260] Exhibit X, LAO Report on 2011 Realignment, at pp. 11; 19.

[261] Exhibit X, LAO Report on 2011 Realignment, at pp. 4-6.

substantially likely to expose the state to liability for mandate reimbursement.[262] Therefore, the LAO recommended that:

> The clearest way to ensure that the 2011 realignment package does not result in state reimbursable mandates would be for the state to pass a constitutional amendment similar to the one proposed by the Governor. That measure excluded the 2011 realignment program changes from the reimbursement requirement.[263]

The following year, the voters approved Proposition 30, on November 6, 2012. In addition to providing new revenue for a period of years, Proposition 30 added article XIII, section 36 to the California Constitution. Section 36 provides:

> (3) *Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section.*
>
> (4)(A) Legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service required by legislation, described in this subparagraph, above the level for which funding has been provided.
>
> (B) Regulations, executive orders, or administrative directives, implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service pursuant to new regulations, executive orders, or administrative directives, described in this subparagraph, above the level for which funding has been provided.[264]

DOF suggested that Proposition 30 might end reimbursement for county welfare departments for ICAN activities:

> [I]n regards to county welfare departments, to the extent that 2011 Realignment funds them for conducting the ICAN activities, under Article XIII, section 36 of the California Constitution, if the Commission outlines reimbursable activities

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[262] Exhibit X, LAO Report on 2011 Realignment, at pp. 11; 19.

[263] Exhibit X, LAO Report on 2011 Realignment, at pp. 11; 19.

[264] California Constitution, article XIII, section 36(c) (adopted November 6, 2012) [emphasis added].

> that cause these departments to incur costs that are in excess of what 2011 Realignment funds, the departments are required to conduct the activities only insofar as funding is provided by 2011 Realignment. Activities that result in costs in excess of what 2011 Realignment provides are not reimbursable mandates and the county welfare departments may conduct those additional activities if they have resources to do so.[265]

But the plain language of the above-quoted provisions of Proposition 30 (now article XIII, section 36) does not support that conclusion. Ultimately, DOF concluded "after deliberating" that reimbursement for ICAN activities is not affected by Proposition 30. Rather, DOF asserts that article XIII, section 36 only applies to limit reimbursement for Legislation enacted after September 30, 2012 that "has the overall effect of increasing costs already incurred by a local agency for programs or levels of service mandated by 2011 Realignment Legislation." DOF also states that it "does not believe that the 2011 Realignment Legislation shifted complete or partial funding responsibility from the state to local government," for the ICAN mandated activities, and that "there is no statute that identifies and/or describes specific funding for ICAN activities." Therefore, DOF concludes that "the approved activities under the ICAN statutes are reimbursable under the law."[266] This conclusion is consistent with the comments submitted by claimant and CSAC, as well as the plain language of article XIII, section 36.

Therefore, the Commission finds that the 2011 Realignment Legislation, coupled with Proposition 30, had no effect on mandate reimbursement for the approved activities identified in the ICAN test claim statement of decision.

V. CONCLUSION

For the foregoing reasons the Commission hereby adopts the attached proposed parameters and guidelines, providing for actual cost reimbursement of the activities approved in the test claim statement of decision and the reasonably necessary activities, as analyzed above.

[265] Exhibit L, DOF Comments on Draft Proposed Statement of Decision and Parameters and Guidelines.

[266] Exhibit R, DOF Response to Commission Request for Comments.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES:

Penal Code Sections 11165.9, 11166,11166.2, 11166.9, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, No. 29)

"Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)

Period of reimbursement begins July 1, 1999, or later for specified activities added by subsequent statutes. Reimbursement ends for specified activities on January 1, 2012.

Case No.: 00-TC-22

Interagency Child Abuse and Neglect Investigation Reports

STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(*Adopted December 6, 2013*)

(*Served December 16, 2013*)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached parameters and guidelines on December 6, 2013.

Heather Halsey, Executive Director

Adopted: December 6, 2013

PARAMETERS AND GUIDELINES

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9[1], 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

"Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)

Interagency Child Abuse and Neglect Investigation Reports
00-TC-22

Period of reimbursement begins July 1, 1999,
or later for specified activities added by subsequent statutes.

I. SUMMARY OF THE MANDATE

This program addresses statutory amendments to California's mandatory child abuse reporting laws commonly referred to as ICAN. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or CANRA. As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000.

The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The act provides rules and procedures for local agencies, including law enforcement, receiving such reports. The act provides for cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys' offices. The act requires reporting to the DOJ when a report of suspected child abuse is "not unfounded." The act requires an active investigation before a report can be forwarded to the DOJ. As of January 1, 2012, the act no longer requires law enforcement agencies to report to the DOJ, and now requires reporting only of "substantiated" reports by other agencies. The act imposes additional cross-reporting and recordkeeping duties in the event of a child's death from abuse or neglect. The act requires agencies and the DOJ to keep records of investigations for a minimum of 10 years, and to notify

[1] Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

suspected child abusers that they have been listed in the Child Abuse Central Index. The act imposes certain due process protections owed to persons listed in the index, and provides certain other situations in which a person would be notified of his or her listing in the index.

On December 19, 2007, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the reimbursable activities described in section IV., as they are performed by city and county police or sheriff's departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorneys' offices, and county licensing agencies.

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the test claim on June 29, 2001, establishing eligibility for reimbursement for the 1999-2000 fiscal year. Therefore, costs incurred on or after July 1, 1999 are reimbursable under this test claim, for statutes in effect before July 1, 1999, or later periods as specified for statutes effective after July 1, 1999.

However, Penal Code section 11169 was amended in Statutes 2011, chapter 468 (AB 717), effective January 1, 2012, to repeal the mandate for law enforcement agencies to report to DOJ, and to require that all other affected departments in the local agencies report to DOJ only "substantiated" reports of suspected child abuse, and not "inconclusive" reports. Thus, law enforcement agencies are eligible for reimbursement for the costs of completing investigations of suspected child abuse in order to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for the purpose of forwarding those reports to DOJ from July 1, 1999 until December 31, 2011, when the mandate was repealed. In addition, law enforcement agencies are eligible for reimbursement for the costs of notifying suspected abusers that they have been listed in the Child Abuse Central Index at the time that a report is submitted to DOJ from July 1, 1999 until December 31, 2011, when the mandate to forward reports to DOJ was repealed.

For all other affected departments in the local agencies, the reimbursement period for forwarding reports that are "inconclusive" to DOJ is from July 1, 1999 until December 31, 2011, due to a subsequent change in Penal Code section 11169 by Statutes 2011, chapter 468 (AB 717). On and after January 1, 2012, only forwarding reports to DOJ that are "substantiated" is reimbursable.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(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.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. 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 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 (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. One-Time Activities

1. Policies and Procedures

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

a. Update Departmental policies and procedures necessary to comply with the reimbursable activities identified in IV B. (One-time costs only)

b. Develop ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI]. (One-time costs only)

2. Training

City and county police or sheriff's departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

> Develop and implement training for ICAN staff to implement State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors for their time in participating in training sessions and to provide necessary facilities, training materials and audio visual presentations. (One time per employee whose job responsibilities involve ICAN mandated activities)

B. On-going Activities

1. Distributing the Suspected Child Abuse Report Form

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

a. Distribute the child abuse reporting form adopted by DOJ (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters.[2]

2. Reporting Between Local Departments

a. Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the

[2] Penal Code section 11168, as added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916.

department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect.[3]

b. Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

1) County probation departments shall:

i. Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

ii. Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[4]

2) County welfare departments shall:

i. Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

Reimbursement is not required for making an initial report of child abuse and neglect from a county welfare department to the law enforcement

[3] Penal Code sections 11165.9 (Stats. 2000, ch. 916, § 8 (AB 1241)).

[4] Penal Code section 11166 (h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

agency having jurisdiction over the case, which was required under prior law to be made "without delay."

ii. Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under Penal Code section 11166.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[5]

c. Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

City and county police or sheriff's departments shall:

1) Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2(b), which shall be reported only to the county welfare department.[6]

2) Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse.

3) Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.

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[5] Penal Code section 11166(h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

[6] Penal Code section 11166(i) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (j) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (k) by Statutes 2005, chapter 42 (AB 299).

As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[7]

d. Receipt of Cross-Reports by District Attorney's Office:

District attorneys' offices shall:

Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2(b).[8]

e. Reporting to Licensing Agencies:

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

1) Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person.

2) Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.2. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

   As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[9]

f. Additional Cross-Reporting in Cases of Child Death:

1) City and county police or sheriff's departments shall:

   Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency.[10]

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[7] *Ibid*.

[8] Penal Code section 11166 (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)).

[9] Penal Code section 11166.2 (Added by Stats. 1985, ch. 1598 § 4; amended by Stats. 1987, ch. 531 § 5; Stats. 1988, ch. 269 § 3; Stats. 1990, ch. 650 § 1 (AB 2423); Stats. 2000, ch. 916 § 18 (AB 1241)).

[10] Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

2) County welfare departments shall:

i. Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.[11]

ii. Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect.[12]

iii. Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.[13]

3. Reporting to the State Department of Justice

a. **From July 1, 1999 to December 31, 2011**, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:[14]

1) Complete an investigation for purposes of preparing the report

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.[15] Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.

[11] Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

[12] Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313); Stats. 2010, ch. 618, § 10 (AB 2791)).

[13] Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

[14] Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ *for law enforcement agencies only* ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.

[15] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

Reimbursement is not required in the following circumstances:

i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).

ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.

2) Forward reports to the Department of Justice

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice (currently form 8583) and may be sent by fax or electronic transmission.[16]

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated or inconclusive to a finding of unfounded or from inconclusive or unfounded to substantiated.

Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.

b. **Beginning January 1, 2012**, county welfare departments, or county probation departments where designated by the county to receive mandated reports shall:

[16] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

1) Complete an investigation

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice.[17] Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.

Reimbursement is not required in the following circumstances:

i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).

ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the "Child Abuse Investigation Report" Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).

iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583.

2) Forward reports to the Department of Justice

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated, as defined in Penal Code section 11165.12. Unfounded or inconclusive reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a

[17] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

form approved by the Department of Justice and may be sent by fax or electronic transmission.[18]

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated to a finding of inconclusive or unfounded, or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI.

Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.

4. Notifications Following Reports to the Child Abuse Central Index

a. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

1) Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice.[19]

This activity includes, where applicable, completion of the Notice of Child Abuse Central Index Listing form (SOC 832), or subsequent designated form.

For law enforcement agencies only, this activity is eligible for reimbursement from July 1, 1999 until December 31, 2011, pursuant to Penal Code section 11169(b), as amended by Statutes 2011, chapter 468 (AB 717), which ends the mandate to report to DOJ for law enforcement agencies.

2) Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.[20]

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[18] Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

[19] Penal Code section 11169(c) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

[20] Penal Code section 11170 (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

3) Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter.[21]

4) Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report.[22]

b. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, county welfare departments, county licensing agencies, and district attorney offices shall:

Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.[23]

Reimbursement for this activity does not include investigative activities conducted by the agency, either prior to or subsequent to receipt of the information that necessitates obtaining and reviewing the investigative report.

c. City and county police or sheriff's departments, county probation departments, and county welfare departments shall:

Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be

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[21] Penal Code section 11170(b) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

[22] *Ibid*.

[23] Penal Code section 11170(b)(6) (Stats. 2000, ch. 916 (AB 1241)); now subdivision (b)(10), as amended by Statutes 2012, chapter 848 (AB 1707).

submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.[24]

5. Record Retention

a. City and county police or sheriff's departments, and county probation departments if designated by the county to receive mandated reports shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[25]

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.

b. County welfare departments shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[26]

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

Reimbursement is not required for the first three years of record retention required under prior law, but only for the seven years following.

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[24] Penal Code section 11170(c) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

[25] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133(AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

[26] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

6. Due Process Procedures Offered to Person Listed in CACI

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Provide due process reasonably necessary to comply with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ's Child Abuse Central Index. This activity includes a hearing before the agency that submitted the individual's name to CACI. This activity includes any due process procedures available to persons listed in the CACI prior to the enactment of Statutes 2011, chapter 468.

Reimbursement is not required for a hearing meeting the requirements of due process if a court of competent jurisdiction has determined that child abuse has occurred, or while the allegation is pending before a court.[27]

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent

[27] (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468 (AB 717)); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

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 are 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 attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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, 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 both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs 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 distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total

allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[28] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 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(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

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

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.