

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 273.75(a) and (c)
Statutes 2001, Chapter 713 (AB 1129)

Filed on July 31, 2002 by
County of Alameda, Claimant

Case No.: 01-TC-29

Domestic Violence Background Checks

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

(Adopted July 28, 2011)

PARAMETERS AND GUIDELINES AND DECISION

On July 28, 2011, the Commission on State Mandates adopted the attached parameters and guidelines, and the staff analysis as its decision on the parameters and guidelines for the above-named matter.



Drew Bohan, Executive Director

Dated: July 29, 2011

PARAMETERS AND GUIDELINES

Penal Code Section 273.75(a) and (c)

Statutes 2001, Chapter 713 (AB 1129)

Domestic Violence Background Checks

01-TC-29

I. SUMMARY OF THE MANDATE

The test claim statute requires district attorneys and prosecuting city attorneys to perform database searches of persons who are charged with domestic violence, or when considering domestic violence restraining orders, and present the information for consideration by the courts under certain circumstances.

On July 26, 2007, the Commission on State Mandates found that Penal Code section 273.75 imposes a reimbursable state-mandated program on district attorneys or prosecuting city attorneys within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to do the following upon any charge involving acts of domestic violence (as defined in Pen. Code, § 13700 & Fam. Code, §§ 6211 & 6203):

- Perform or cause to be performed, in specified electronic data bases,¹ a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court (Pen. Code, § 273.75(a)).
- Present the information for consideration by the court: (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody; and (2) upon consideration of any plea agreement (Pen. Code, § 273.75(a)).
- If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the order issued in the current criminal proceeding, and any other information regarding a conviction of the defendant, to the other court immediately after the order has been issued (Pen. Code, § 273.75(c)).

¹ As specified in Penal Code section 273.75(b), the electronic data bases to be searched, "when readily available and reasonably accessible," are:

- (1) The Violent Crime Information Network (VCIN).
- (2) The Supervised Release File.
- (3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.
- (4) The Federal Bureau of Investigation's nationwide data base.
- (5) Locally maintained criminal history records or data bases.

The Commission denied all other code sections pled by the claimant.

II. ELIGIBLE CLAIMANTS

Any city or county that employs prosecuting attorneys or district attorneys, respectively, and incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of these costs.

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 Alameda filed the test claim on July 31, 2002, establishing eligibility for reimbursement beginning July 1, 2001. However, Statutes 2001, chapter 713 did not become operative until January 1, 2002. Therefore, costs incurred for compliance with the mandated activities are reimbursable on or after January 1, 2002.

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

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

certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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.

For each eligible claimant, the following ongoing activities are eligible for reimbursement upon any charge involving acts of domestic violence (as defined in Pen. Code, § 13700 & Fam. Code, §§ 6211 & 6203):

- A. Perform or cause to be performed, in specified electronic data bases, a thorough investigation of the defendant’s history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court (Pen. Code, § 273.75(a)).
 - 1. Review by district attorney or prosecuting city attorney, or at the direction of such attorneys by investigative staff, support staff, legal assistant or others of any or all of the databases as listed in Penal Code section 273.75 as based on defendant information provided in or with the law enforcement report.
- B. Present the information for consideration by the court (1) when setting bond or when releasing a defendant on his or her own recognizance at the arraignment, if the defendant is in custody, and (2) upon consideration of any plea agreement (Pen. Code, § 273.75(a)).
 - 1. Review of databases or printouts from databases by district attorney or prosecuting city attorney in preparation for presenting such database evidence in court.
 - 2. Presentation of evidence in court by district attorney or prosecuting city attorney.
- C. If a protective or restraining order is issued in the current criminal proceeding, and if the investigation reveals a current civil protective or restraining order issued by another criminal court and involving the same or related parties, the district attorney or prosecuting city attorney sends relevant information regarding the contents of the order issued in the current criminal proceeding, and any other information regarding a conviction of the defendant, to the other court immediately after the order has been issued (Pen. Code, § 273.75(c)).

1. Review of databases or printouts from databases, case file, and other sources as may be necessary by district attorney or prosecuting city attorney, or by another at the direction of the attorney, to obtain relevant information for a letter or report to be sent to order-issuing court of a different jurisdiction.
2. Draft letter or report and sign.
3. Prepare envelope and mail.

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

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: (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

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

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

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

1. the allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
2. the allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by: (1) 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 chapter² is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenues 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 received from any federal, state or non-local source shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d)(1), and California Code of Regulations, title 2, section 1183.2.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.