

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909;
Statutes of 1997, Chapters 17, 80, 817, 818,
819, 820, 821 and 822; Statutes of 1998,
Chapters 485, 550, 927, 928, 929 and 930

Directed by Statutes 2004, Chapter 316,
Section 3, Subdivision (a) (AB 2851)
Effective July 1, 2005

No. 04-PGA-06 (97-TC-15)

*Sex Offenders: Disclosure by Law Enforcement
Officers (Megan's Law)*

ADOPTION OF PARAMETERS AND
GUIDELINES AMENDMENT PURSUANT TO
GOVERNMENT CODE SECTION 17557 AND
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.2

(Adopted on March 29, 2006)

CORRECTED PARAMETERS AND GUIDELINES AMENDMENT

On March 29, 2006, the Commission on State Mandates adopted the attached Parameters and Guidelines Amendment. The period of reimbursement for the activities in this parameters and guidelines amendment begins on July 1, 2004, as specified.

Date: June 28, 2006

Paula Higashi, Executive Director

PARAMETERS AND GUIDELINES AMENDMENT

Penal Code Sections 290 and 290.4

Statutes 1996, Chapters 908 and 909

Statutes 1997, Chapters 17, 80, 817, 818, 819, 820, 821, and 822

Statutes 1998, Chapters 485, 550, 927, 928, 929, and 930

Sex Offenders: Disclosure by Law Enforcement Officers, (“Megan’s Law”)
04-PGA-06 (04-RL-9715-06)

I. SUMMARY OF THE MANDATE

On August 23, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that the test claim legislation imposes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and costs mandated by the state pursuant to Government Code section 17514.

Statutes 2004, Chapter 316, section 3, subdivision (a) (Assem. Bill No. 2851, eff. Jan. 1, 2005) directed the Commission to reconsider the prior final decision and parameters and guidelines for the *Sex Offenders: Disclosure by Law Enforcement Officers (Megan’s Law)* program. On September 27, 2005, the Commission found that, in years in which they are not suspended by the Legislature,¹ the test claim statutes impose a reimbursable state mandate within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556, for all activities listed in the *Sex Offenders: Disclosure by Law Enforcement Officers (Megan’s Law)* Statement of Decision (97-TC-15)² except for: (1) those that implement a federal law and have costs that are, in context, de minimis; or (2) one that is no longer required because it is a one-time activity.

Except for the one-time activity, the modifications to the Commission’s prior Statement of Decision are based on the case *San Diego Unified School District. v. Commission on State Mandates*.³

II. ELIGIBLE CLAIMANTS

Any county, city, city and county, or community college district, that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs, except as limited in Section IV, activity 12.

¹ This program is suspended in the Fiscal Year 2004-2005 Budget Act, Statutes 2004, chapter 208, Item 0820-295-001, Schedule 3, and in the Fiscal Year 2005-2006 Budget Act, Statutes 2005, chapter 38, Item 8885-295-001, Schedule 3 (d).

² See Exhibit A to the Final Staff Analysis, Item 4, adopted September 27, 2005, page 383, hereafter referred to as Exhibit A.

³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begins on July 1, 2004. However, no reimbursement is authorized in years when the Legislature suspends the program. This program is suspended for the 2004-2005 and 2005-2006 fiscal years. Therefore no reimbursement is authorized for fiscal years 2004-2005 and 2005-2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

A local agency or community college district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).

A local agency or community college district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or community college district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. 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.

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.

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, the following activities are reimbursable:

1. Train staff on implementing the reimbursable activities listed in Section IV, activities 2 through 9, of these parameters and guidelines. (One-time activity per employee.)
2. Remove a sex offender's⁴ registration from the local jurisdiction's files within 30 days of receiving notice to do so from the Department of Justice. (Pen. Code, § 290, subd. (a)(2)(F)(i)(iii).)⁵
3. If the local law enforcement agency is the current place of incarceration, pre-registration of a convicted sex offender, including the obtaining of a current photograph and fingerprints of the offender as well as a written statement relaying information as is required by the Department of Justice. Notify the sex offender as acknowledgement of the information contained within the pre-registration statement. (Pen. Code, § 290, subd. (e)(1)(A-C).)⁶
4. Verify that the offender's registration includes information related to any vehicle regularly driven by the offender, including license number, make, model, and such other information as may be requested by the Department of Justice. (Pen. Code, § 290, subd. (e)(2)(C).)⁷
5. If the offender does not have a residence, and no reasonable expectation of obtaining a residence in the foreseeable future, then the local law enforcement agency shall obtain a statement to that effect from the sex offender. (Pen. Code, § 290, subd. (e)(2)(E).)⁸
6. Provide high-risk sex offenders a printed form from the Department of Justice regarding reevaluation in order to be removed from the high-risk classification. (Pen. Code, § 290.45, subd b(1)(G)(ii).)⁹
7. Maintain photographs and statistical information concerning high-risk sex offenders as is received quarterly from the Department of Justice. (Pen. Code, § 290.45, subd. (b)(2).)¹⁰
8. For sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000, and police departments or community college districts, to provide the necessary equipment, and staff assistance for the public to access the sex offender information provided by the Department of Justice on CD-ROM or other

⁴ For purposes of mandatory registration, the definition of sex offender excludes persons convicted under Penal Code section 288a, subdivision (b)(1), of voluntary oral copulation with a 16 or 17 year old minor. (*People v. Hofsheier* (March 6, 2006, S124636) [2006 WL 522365].)

⁵ As added by Statutes of 1997, chapter 821.

⁶ As added by Statutes of 1997, chapter 821.

⁷ As added and amended by Statutes of 1997, chapter 821.

⁸ As added by Statutes of 1998, chapters 928 and 929.

⁹ As added by Statutes of 1996, chapter 908, an urgency statute effective September 25, 1996.

¹⁰ As added by Statutes of 1996, chapter 908.

electronic medium, and to obtain information from individuals requesting access to the CD-ROM as required by the Department of Justice. (Pen. Code, § 290.4, subd. (a)(4)(A).)

9. Maintain records of those persons requesting access to the information contained within the CD-ROM or other electronic medium for a minimum of five years, and costs of destruction of such records at the end of such time. (Pen. Code, § 290.4 (1). Additionally, a record of the means and dates of dissemination of information regarding high-risk offenders must be maintained for a minimum of five years, and costs of destruction at the end of such time. (Pen. Code, § 290.45, subd. (c).)¹¹

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. 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 services that were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

¹¹ As amended by Statutes of 1997, chapter 821.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

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.

Cities and Counties

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the 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 OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB 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 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 allowable indirect costs bears to the base selected.

Community Colleges

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the OMB Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or community college district pursuant to this chapter¹² 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 SAVINGS AND REIMBURSEMENTS

Any offsetting savings 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, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving therevised adopted parameters and guidelines from the Commission, to assist local agencies and community college districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

¹² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and community college districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or community college 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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