

Adopted: February 26, 1998
File Number: CSM-9636502
Commission Staff
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Proposed Parameters and Guidelines

Penal Code Section 832.9

Chapter 1249, Statutes of 1992

Chapter 666, Statutes of 1995

Threats Against Peace Officers

EXECUTIVE SUMMARY

Summary of the Mandate

On April 24, 1997, the Commission on State Mandates determined the provisions of Penal Code section 832.9, as added by Chapter 1249, Statutes of 1992 and amended by Chapter 666, Statutes of 1995, imposed a reimbursable state mandated program. The test claim statutes require governmental entities employing peace officers to pay certain actual and necessary moving expenses incurred by peace officers or members of their immediate family if there are credible threats against the safety of either the peace officer or immediate family members as a result of the peace officer's employment.

December 18, 1997 Hearing

At the December 18, 1997 hearing, Commission staff proposed Parameters and Guidelines for adoption. Mr. Kennedy, representative for the claimant, objected to section V.C.1. which provides that litigation expenses and attorney's fees incurred by the counties are not reimbursable. The claimant initially requested that litigation expenses be reimbursable within the parameters and guidelines. The claimant's representative stated that if the Commission chooses to keep V.C.1. that "litigation expenses" will have to be defined because the proposed language is ambiguous.

The Commission postponed the matter to January 29, 1998 and requested that staff address claimant's comments regarding section V.C.1.

January 29, 1998 Hearing

To address the claimant's concern, staff revised the proposed Parameters and Guidelines on December 23, 1997 to define litigation costs by referencing Code of Civil Procedure section 1033.5. Section 1033.5 enumerates litigation expenses "allowable as costs" and "not allowable as costs." Staff's revision expressly excludes

both types of litigation expenses from reimbursement under the Threats Against Peace Officers program as follows:

"Litigation expenses "allowable as costs" and "not allowable as costs" pursuant to section 1033.5 of the Code of Civil Procedure are not reimbursable if incurred by claimants and/or local law enforcement agencies responding to and/or defending claims or actions brought under Penal Code section 832.9." (See Exhibit A.)

Staff mailed its revised draft on December 23, 1997, to the claimant and interested parties. On January 14, 1998, the claimant sent a letter of non-opposition to staff's proposed amendment. (See Exhibit E, Bates page 103.) *No other written comments were received prior to the January 29, 1998, hearing.*

The claimant did not appear at the January 29, 1998, hearing. However, Mr. Allan Burdick appeared on behalf of the California State Association of Counties. Mr. Burdick orally testified that litigation expenses are eligible as reimbursable costs and, therefore, section V.C.1. should be deleted from the Parameters and Guidelines. Mr. Burdick also made the following three contentions:

- That section V.C.1., which excludes litigation expenses, was a staff-proposed provision.
- That "non-reimbursable costs" are not typically included in Parameters and Guidelines.
- That the Parameters and Guidelines on two existing programs, namely the programs on Firefighter Cancer Presumption and Peace Officer Cancer Presumption in workers compensation cases, included legal costs as reimbursable costs.

The Commission postponed the matter to February 26, 1998, and requested that staff address Mr. Burdick's comments regarding section V.C.1.

Staff's Response

The issue before the Commission is whether section V.C.1. on litigation expenses as a non-reimbursable cost should be deleted from the Parameters and Guidelines. Staff submits that litigation expenses, as defined by Code of Civil Procedure section 1033.5, are non-reimbursable costs and that section V.C.1. should remain in the Parameters and Guidelines. Staff will address each of Mr. Burdick's contentions below.

- That section V.C.1., which excludes litigation expenses, was a staff-proposed provision.

Mr. Burdick's contention is erroneous. Rather, section V.C.1 was included *in response* to the claimant's proposed Parameters and Guidelines submitted on May 22, 1997. (Exhibit B, Bates pages 29 through 34.)

In its proposed Parameters and Guidelines, the claimant sought the reimbursement of litigation expenses and attorneys fees incurred by local governmental entities

responding to or defending claims brought under Penal Code section 832.9. State agencies responded and opposed the inclusion of litigation expenses and attorney's fees as reimbursable costs (see Exhibit B, Bates pages 41 through 47), and staff agreed.

- That “non-reimbursable costs” are not typically included in Parameters and Guidelines.

This contention by Mr. Burdick is also erroneous. Rather, “non-reimbursable costs” or “limitations to reimbursement” have routinely been included in Parameters and Guidelines.¹ Moreover, if a provision labelled “non-reimbursable costs” or “limitations to reimbursable” clarifies a set of Parameters and Guidelines, the provision should be used.

- That the Parameters and Guidelines on two existing programs, namely the programs on Firefighter Cancer Presumption and Peace Officer Cancer Presumption in workers compensation cases, included legal costs as reimbursable costs.

In response, staff submits that the firefighter and peace officer cancer presumption programs are distinguishable from the matter at hand. In 1982, the Legislature added section 3212.1 to the Labor Code relating to workers compensation cases (Chapter 1568, Statutes of 1982.) That section gives firefighters exposed to known carcinogens and diagnosed with cancer reasonably linked to the carcinogen a rebuttable presumption that the cancer “arose out of and in the course of employment” for purposes of workers compensation. This presumption relieves firefighters from having to prove in their workers’ compensation cases that the cancer was proximately caused by a specific carcinogen in the workplace before being awarded benefits.² In 1989, the Legislature gave the same rebuttable presumption to peace officers (Chapter 1171, Statutes of 1989.)

Labor Code section 3212.2, as added and amended by Chapter 1568, Statutes of 1982, and Chapter 1171, Statutes of 1989, were found to constitute reimbursable state

¹ See the following Parameters and Guidelines:

- Reimbursement of Unemployment Insurance (Chapter 2, Statutes of 1978) containing a section on “Limitations to Reimbursement”.
- Marriage Mediator Programs (Chapter 48, Statutes of 1980) containing a section on “Reimbursement Limitation.”
- Property Taxation: Family Transfers (Chapter 48, Statutes of 1987) containing the following notation: “Note: County costs to process and verify claims for exclusion of interfamily transfers from reassessment are not eligible for reimbursement.”
- Removal of Chemicals (Chapter 1107, Statutes of 1984) containing sections on “Non-reimbursable Activities” and “Limitation.”
- Charging Documents (Chapter 1111, Statutes of 1981) containing a section on “Reimbursement Limitation.”
- Mineral Resource Policies (Chapter 1131, Statutes of 1975) containing a section on “Limitations.”
- Regional Housing Need Determinations, Councils of Governments (Chapter 1143, Statutes of 1980) defining reimbursement limitations as follows: “Reimbursement for activities 1 through 5 above shall be subjected to the following limitations.”

² See *Riverview Fire Protection Dist. v. W.C.A.B.* (1994) 23 Cal.App.4th 1120, review denied.

mandated programs by the Board of Control and the Commission. Legal counsel costs were included as reimbursable costs in the Parameters and Guidelines in both cases.

However, the cancer presumption programs are distinguishable from the Threats Against Peace Officers program. Under the cancer presumption programs, litigation expenses are naturally encompassed in the statute: i.e., the only way an injured employee can receive workers' compensation benefits is to file a claim and litigate the case before the Workers Compensation Appeals Board.

On the other hand, litigation between the officer and the local agency is *not* an integral part of the Threats Against Peace Officers program under Penal Code section 832.9. This program does not require litigation before a peace officer can receive actual and necessary moving expenses.

Moreover, Penal Code section 832.9, subdivision (b), subjects law enforcement agencies and their affected officers to explicit reimbursement provisions.³ For example, the actual and necessary moving costs shall be those costs set forth in the rules governing relocations issued by the State Department of Personnel Administration. The Department's rules, therefore, act as a built-in set parameters and guidelines.

In sum, staff submits that litigation expenses are *not reimbursable* under the Threats Against Peace Officers test claim statute and should be expressly highlighted in the Parameters and Guidelines under section V.C.1. The addition of section V.C.1. will avoid any questions or controversies when local agencies file reimbursement claims with the State Controller's Office.⁴

Staff Recommendation

Staff recommends adoption of Staff's Proposed Parameters and Guidelines, as revised on December 23, 1997. (See Exhibit A.)

³ See Exhibit I, Bates page 151, for the full text of Penal Code section 832.9.

⁴ If section V.C.1 is deleted from the Parameters and Guidelines, staff submits that the deletion would cause further ambiguity over whether litigation expenses are reimbursable.

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EXHIBIT A**Staff's Proposed Parameters and Guidelines – Revised 12/23/97**

Penal Code Section 832.9
Chapter 1249, Statutes of 1992
Chapter 666, Statutes of 1995

Threats Against Peace Officers**I. Summary of the Mandate Source**

Chapter 1249, Statutes of 1992, added Penal Code section 832.9. This statute requires governmental entities employing peace officers to reimburse the officer, or any member of his or her family for actual and necessary moving and relocation expenses incurred when it is necessary to move because the officer has received a threat that a life threatening action may be taken against the officer or his or her immediate family as a result of the peace officer's employment.

Chapter 666, Statutes of 1995, amended Penal Code section 832.9, by specifying guidelines for reimbursement.

II. Commission on State Mandates Decision

On April 24, 1997, the Commission determined that the requirements of Penal Code section 832.9, as added by Chapter 1249, Statutes of 1992, and amended by Chapter 666, Statutes of 1995, imposed upon local governments, a new program or higher level of service, within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code.

III. Eligible Claimants

Eligible claimants include any local governmental entity employing peace officers, as defined in Penal Code section 830. Local governmental entities include "local agencies" as defined in Government Code section 17518, and "school districts" as defined in Government Code section 17519.

IV. Period of Reimbursement

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this state mandated program was filed on December 30, 1996, establishing eligibility for Fiscal Year 1995-96, commencing July 1, 1995. However, both test claim statutes were *not* in effect on July 1, 1995. Therefore, reimbursement claims may be filed as follows:

Actual and necessary costs incurred pursuant to Chapter 1249, Statutes of 1992, are reimbursable after July 1, 1995.

Actual and necessary costs incurred pursuant to Chapter 666, Statutes of 1995, are reimbursable after January 1, 1996.

Actual and necessary costs for one fiscal year should be included in each claim. Estimated costs for the subsequent fiscal year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(3) of the Government Code, all claims for reimbursement of initial year's costs shall be submitted within 120 days of release of claiming instructions by the State Controller.

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

V. Reimbursable Costs

A. Scope of Mandate

Eligible claimants shall be reimbursed for the costs incurred to reimburse peace officers or any member of their immediate family for actual and necessary moving and relocation expenses when it is necessary to move because the officer has received a credible threat that a life threatening action may be taken against the officer or his or her immediate family as a result of the peace officer's employment.

B. Reimbursable Activities

For the following state mandated activities, costs incurred by a local governmental entity for the direct and indirect costs of labor, supplies, services, and reimbursement payments made to a peace officer or member of his or her immediate family, residing with the peace officer, are reimbursable:

1. From July 1, 1995 through December 31, 1995

- a. Review and approve claims for actual and necessary moving and relocation expenses incurred when it is necessary to move because the officer has received a threat that a life threatening action may be taken against the officer or his or her immediate family as a result of the peace officer's employment. Costs incurred both before and after the change of residence, including costs of moving household effects either by a commercial household goods carrier or by the employee, are reimbursable.
- b. Payment of the approved reimbursement to the peace officer or member of his or her immediate family residing with the officer for actual and necessary moving and relocation expenses.

2. From January 1, 1996 through Present

- a. Receive notification of a "credible threat." (Pen. Code, § 832.9, subds. (b)(5) & (c).)

- b. Approve relocation plans and if necessary, verify residency of immediate family member. (Pen. Code, § 832.9, subds. (a), (b)(3), & (d).)
- c. Review and approve claims for actual and necessary moving and relocation expenses incurred when it is necessary to move because the officer has received a threat that a life threatening action may be taken against the officer or his or her immediate family as a result of the peace officer's employment. Costs incurred both before and after the change of residence, including costs of moving household effects either by a commercial household goods carrier or by the employee, are reimbursable. Approval of "actual and necessary relocation costs" is subject to the limitations set forth in Penal Code section 832.9, as amended by Chapter 666, Statutes of 1995.
- d. Payment of the approved reimbursement to the peace officer or member of his or her immediate family for actual and necessary moving and relocation expenses.

C. Non-Reimbursable Costs

- 1. Litigation expenses "allowable as costs" and "not allowable as costs" pursuant to section 1033.5 of the Code of Civil Procedure, are not reimbursable if incurred by claimants and/or local law enforcement agencies responding to and/or defending claims or actions brought under Penal Code section 832.9.
- 2. After January 1, 1996, the following costs are not reimbursable:
 - a. Moving costs that are *not* included in the Department of Personnel Administration rules governing promotional relocations. (Pen. Code, § 832.9, subd. (1).)
 - b. Loss or decrease in value to a peace officer's residence due to a forced sale. (Pen. Code, § 832.9, subd. (b)(2).)
 - c. Costs incurred by a peace officer or member of their immediate family without prior approval of the appointing authority. (Pen. Code, § 832.9, subd. (b)(3).)
 - d. Unauthorized payment of peace officers' salaries while moving. (Pen. Code, § 832.9, subd. (b)(4).)
 - e. Temporary relocation housing which exceeds 60 days. (Pen. Code, § 832.9, subd. (b)(6).)
 - f. Relocation costs incurred 120 days after the original notification of a viable threat if the peace officer has failed to relocate. (Pen. Code, § 832.9, subd. (b)(7).)

VI. Claim Preparation and Submission

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

A. Reporting by Components

Claimed costs must be allocated according to the components of reimbursable activity described in Section V.B.

B. Supporting Documentation

Claimed costs should be supported by the following information:

1. Salaries and Benefits

Claimed reimbursement for employee costs should be supported by name, position, hourly productive rate, hours worked, fringe benefits amount, and a brief description of assigned unit and function relative to the mandate.

2. Services and Supplies

The claimant should identify all direct costs for materials, services and supplies which have been purchased, leased, consumed or expended for purposes of compliance with the mandate.

3. Reimbursements to Peace Officer or Member of His or Her Immediate Family for Actual and Necessary Moving and Relocation Expenses

- a. Show the dates when the claimant received notification of the threat, when moving and relocation expenses were incurred, and when the officer or member of his or her immediate family was reimbursed.
- b. Submit with the claim, a copy of the contract, invoices, and receipts for the cost of moving and relocation. Identify the independent contractor or employee who provided services for moving and relocation.
- c. If confidentiality is involved to protect the officer's relocation, mark out sensitive areas of the contract, invoices, and receipts.

4. Allowable Overhead Costs

Government Code section 17564, subdivision (b), provides that claims for indirect costs shall be filed in the manner prescribed by the State Controller's Office.

VII. Supporting Data

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

VIII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., service fees collected, federal funds, other state funds, etc. shall be identified and deducted from this claim.

IX. Required Certification

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained therein.