

Proposed for Adoption: July 28, 2011

REVISED
10/22/11

PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 273.75, Subdivisions (a) and (c)

Statutes 2001, Chapter 713 (AB 1129)

Domestic Violence Background Checks

01-TC-29

County of Alameda, Claimant

I. SUMMARY OF THE MANDATE

The test claim statute requires district attorneys and prosecuting city attorneys to perform data base 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, subd. (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, subd. (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

¹ As specified in subdivision (b) of Penal Code section 273.75, 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.”

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, subd. (c)).

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

II. ELIGIBLE CLAIMANTS

Any county district attorneys and prosecuting city attorneys that incur increased costs as a result of this reimbursable state-mandated program are eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (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, subdivision (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, subdivision (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, subdivision (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, subdivision (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.

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, subd. (a)).
- 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, subd. (a)).
- 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, subd. (c)).

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. 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 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 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.

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. RECORDS RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this 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 offsets 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

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

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, subdivision (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, subdivision (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, subdivision (a), 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.

Office of the District Attorney
Alameda County
Nancy E. O'Malley, District Attorney



Rene C. Davidson County Counsel
1225 Fallon Street, Suite 900
Oakland, CA 94612

COMMENTS ON PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 273.75, Subdivisions (a) and (c)

Statutes 2001, Chapter 713 (AB 1129)

Domestic Violence Background Checks
01-TC-29

County of Alameda, Claimant

Test Claimant County of Alameda (hereinafter "County") submits the following in response to the Proposed Parameters and Guidelines (Ps & Gs) issued by Commission staff on February 11, 2011.

The County generally concurs with the reimbursable activities as set forth in the Proposed Ps & Gs yet seeks to provide clarification of the activities. Such clarification includes activities not mandated but which are necessary to the mandate itself. As stated in regulation, in pertinent part:

(a) The parameters and guidelines shall describe the claimable reimbursable costs and contain the following information:

* * *

(4) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and 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. (2 CCR § 1183.1, subd. (a)(4).)

The County proposes the following for the activities involved with database review:

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, subd. (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.

This proposed language change merely clarifies the nature of the activity and does not expand upon it by adding other non-mandated activities.

The County proposes the following for the activities involved with presentation of database review evidence:

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, subd. (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.

This proposed language adds the activity of preparation for court. Incumbent upon any attorney, to ensure the smooth running of the court, is to arrive at the hearing prepared. This preparation requires time spent reviewing the case file. Attorney preparation time is necessary to the mandated activity of presenting evidence in court. Moreover, inclusion of this activity is reasonable and is consistent with Commission decisions in other mandates which require attendance at a hearing, for example, Mandate Reimbursement Process (CSM-4204/4485) and Local Government Employee Relations (PERB) (CSM 01-TC-30).

The County proposes the following for the activities involved with the notice to the court of another jurisdiction:

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, subd. (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.

This proposed language adds the activities of obtaining relevant information, drafting the letter or report and mailing. It is axiomatic that to convey relevant information one must have first obtained such relevant information which is covered in the first step of the proposed process. So, too, one must create that which is to be conveyed, thus, the letter or report is drafted. Finally, the sending of a document requires a properly addressed envelope and affixed postage. All are a mere expansion and step-by-step analysis of the original language proposed by staff and each a reasonable and necessary part of the mandated activity.

The County further requests the Ps & Gs include the standard language for time studies. Although attempts with the Department Finance to establish a Reasonable Reimbursement Methodology (RRM) failed, each jurisdiction may find that the repetitive nature of the activities will lend itself well to a time study.

The County respectfully requests the Commission adopt each of the proposed additions to the Ps & Gs as set forth above.

CERTIFICATION

~~I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and correct, except as to those matters stated upon information and belief and as to those matters, I believe them to be true.~~

Executed this 14th day of March, 2011, at Oakland, California, by:



Nancy E. O'Malley, District Attorney
County of Alameda



JOHN CHIANG
California State Controller
Division of Accounting and Reporting

March 11, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Corrected Schedule for Comments – Proposed Parameters and Guidelines
Domestic Violence Background Checks, 01-TC-29
Penal Code Section 273.75
Statutes 2001, Chapter 713 (AB 1129)
County of Alameda, Claimant

Dear Mr. Bohan:

We have reviewed the proposed parameters and guidelines submitted by the County of Alameda. Below are our comments and recommendations. Proposed additions are underlined and deletions are indicated with strikethrough as follows:

II. ELIGIBLE CLAIMANTS

~~Any county district attorneys and prosecuting city attorneys that incur~~ 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 are eligible to claim reimbursement of these these costs.

III. PERIOD OF REIMBURSEMENT

4. In the event ~~If~~ revised claiming instructions are issued by the Controller pursuant to Government Code section 17558, subdivision (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, subdivision (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, subdivision (a).

VI. RECORDS-RETENTION

Mr. Drew Bohan
March 11, 2011
Page 2

IX. REMEDIES BEFORE THE COMMISSION

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

Should you have any questions regarding the above, please contact Johnny Wong at (916) 324-5732, or e-mail to jawong@sco.ca.gov.

Sincerely,



JAY LAL, Manager
Local Reimbursement Sections



JOHN CHIANG
California State Controller
Division of Accounting and Reporting

June 29, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Draft Staff Analysis, Schedule for Comments, and Hearing Date
Proposed Parameters and Guidelines
Domestic Violence Background Checks, 01-TC-29
Penal Code Section 273.75
Statutes 2001, Chapter 572 (SB 66); Statutes 2001, Chapter 713 (AB 1129)
County of Alameda, Claimant

Dear Mr. Bohan:

The State Controller's Office has reviewed and recommends no changes to the proposed parameters and guidelines for the Domestic Violence Background Checks program.

Should you have any questions regarding the above, please contact Johnny Wong at (916) 324-5732, or e-mail to jawong@sco.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "JAY LAL", with a long horizontal flourish extending to the right.

JAY LAL, Manager
Local Reimbursement Sections



EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

June 30, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

**Proposed Parameters & Guidelines 01-TC-29 "Domestic Violence Background Checks—
County of Alameda."**

Dear Mr. Bohan:

The Department of Finance (Finance) has reviewed the draft staff analysis of the proposed Parameters and Guidelines for the Domestic Violence Background Checks mandate submitted by the County of Alameda (claimant). We do not have significant concerns with a majority of the reimbursable activities as they appear to be consistent with the statement of decision. However, if reimbursement is provided for the activity of reviewing a defendant's history in the specified database, printouts, and other sources, it should be limited to a reasonable, non-excessive amount of time, as should be the case for all reimbursable activities.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Jeff Carosone, Principal Program Budget Analyst at (916) 445-8913.

Sincerely,

A handwritten signature in cursive script that reads "Nona Martinez".

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

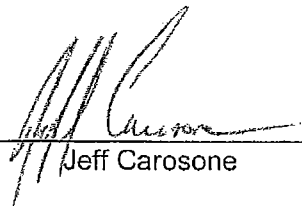
Enclosure A

DECLARATION OF JEFF CAROSONE
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-29

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

6-24-11
at Sacramento, CA


Jeff Carosone