

ITEM 9
PROPOSED PARAMETERS AND GUIDELINES
FINAL STAFF ANALYSIS

Penal Code Sections 12025, Subdivision (h)(1) and (h)(3), 12031, Subdivision (m)(1)
and (m)(3), 13014, 13023, and 13730, Subdivision (a)

Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993,
Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571
(AB 491); and Statutes 2000, Chapter 626 (AB 715)

Crime Statistics Reports for the Department of Justice
02-TC-04 and 02-TC-11

and

Penal Code Section 13023
Statutes 2004, Chapter 700 (SB 1234)

Crime Statistics Reports for the Department of Justice Amended
07-TC-10

City of Newport Beach and County of Sacramento, Claimants

Executive Summary

Background

On June 26, 2008, the Commission on State Mandates (Commission) considered the *Crime Statistics Reports for the Department of Justice* test claims (02-TC-04 and 02-TC-11) and determined that, beginning July 1, 2001, the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide the California Department of Justice (DOJ) with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, § 13014).
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, § 13023).

- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

On July 31, 2009, the Commission considered the *Crime Statistics Reports for the Department of Justice Amended* test claim (07-TC-10). The claim was originally filed as an amendment to, and severed from, test claims 02-TC-04 and 02-TC-11, *Crime Statistics Reports for the Department of Justice*. The Commission determined that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on local law enforcement agencies to report the following in a manner to be prescribed by the Attorney General:

- Any information that may be required relative to hate crimes, as defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of one or more of the following *perceived* characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.
- Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of *association with a person or group with one or more of the following actual or perceived characteristics*: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.

On April 12, 2010, the Commission issued a Corrected Statement of Decision in *Crime Statistics Reports for the Department of Justice Amended* (07-TC-10) to correctly identify the operative and effective date of Penal Code section 13023, as amended by Statutes 2004, chapter 700, as January 1, 2005.

These test claims were filed by a city and a county. Although the test claim statutes refer to “local law enforcement agencies” or “local government entity,” the Commission’s findings and decisions are limited to city and county claimants.

Staff Analysis

The main issues in dispute involve the scope of the reimbursable activities in Section IV of the parameters and guidelines. The claimants filed comments on the draft staff analysis, concurring with the proposed one-time activities and ongoing activity for the district attorneys’ office to annually submit a firearm report to the state. However, the claimants request reimbursement to review and edit the homicide and hate crimes reports to the state, and the local written incident report on domestic violence.

For the reasons stated in the analysis, staff recommends that the Commission approve reimbursement for the following activities in Section IV of the claimants' proposed parameters and guidelines, as modified by staff:

One-Time Activities

- A. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the reporting of the hate crime and demographic information required by Penal Code sections 12025, subdivisions (h)(1) and (h)(3), 12031, subdivisions (m)(1) and (m)(3), 13014, and 13023 to the California Department of Justice and the Attorney General.
- B. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the requirement in Penal Code section 13730, subdivision (a) (as amended by Stats. 1993, ch. 1230) to support all domestic violence related calls for assistance with a written incident report.

Ongoing Activities

- A. Homicide Reports: (Pen. Code, § 13014; Stats. 1992, ch. 1338)

For a city, county, or city and county responsible for the investigation and prosecution of a homicide case, to provide the California Department of Justice, on a form distributed by the California Department of Justice, with demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background.

The following activities are eligible for reimbursement:

1. Extract demographic information from existing local records about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background, from local records in order to report the information to Department of Justice.
2. Report to the Department of Justice, on a monthly basis, demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background. Reporting may be accomplished electronically via the Electronic-Crime and Arrest Reporting Systems (E-CARS) Plus, or manually by submitting DOJ Form BCIA 15 (Supplemental Homicide Report), or other form distributed in accordance with Penal Code section 13014 by the Department of Justice.
3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice

Reimbursement is not required to review and edit every report.

- B. Hate Crime Reports: (Pen. Code, § 13023; Stats. 1989, ch. 1172; Stats. 1998, ch. 933; Stats. 2000, ch. 626; Stats. 2004, ch. 700)

For city, county, and city and county law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to hate crimes:

The following activities are eligible for reimbursement:

1. Extract the information required by the Attorney General relative to hate crimes from existing law enforcement records in order to report the information to the Department of Justice.¹
2. Report to the Department of Justice on an annual and monthly basis, in a manner prescribed by the Attorney General, the information required relative to hate crimes. Reporting may be accomplished electronically via the Hate Crime Analysis, Tracking & Evaluation (HATE) System, manually by submitting the agency crime report, or any other manner prescribed by the Attorney General.
3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice.

Reimbursement is not required to review and edit every report.

- C. Firearm Reports: (Pen. Code, §§ 12025, subd. (h)(1) & (h)(3) & 12031, subd. (m)(1) & (m)(3); Stats. 1999, ch. 571)

For district attorneys to submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

The following activities are eligible for reimbursement *from July 1, 2001, through December 31, 2004 only*:

1. Extract the following information from existing local law enforcement records in order to report the information to the Attorney General: race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.
2. Report to the Attorney General on Form CJSC 4, or in another manner prescribed by the Attorney General, profiles by race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under

¹ Penal Code section 13023 was amended in 2004 to clarify the definition of hate crime as provided in Penal Code section 422.55. (Stats. 2004, ch. 700.)

Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

Reimbursement is not required to review and edit the report.

- D. Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

The following activity, performed by local law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.

In addition, the claimants request that the parameters and guidelines include time study language for claiming reimbursement for task-repetitive activities. The proposed parameters and guidelines, as modified by staff, include the following language:

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts 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.

Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the Claimants' proposed consolidated parameters and guidelines, as modified by staff, beginning on page 19.
 - Authorize staff to make non-substantive, technical corrections to the parameters and guidelines following the hearing.
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STAFF ANALYSIS

Claimant

City of Newport Beach
County of Sacramento

Chronology

- 06/26/08 Commission adopts Statement of Decision on 02-TC-04 and 02-TC-11 (Exhibit A)
- 06/26/08 Claimant notifies Commission they will be developing joint RRM with Finance on 02-TC-04 and 02-TC-11
- 06/15/09 Finance notifies Commission they are no longer developing joint RRM on 02-TC-04 and 02-TC-11.
- 06/16/09 Commission notifies claimant they have 30 days to submit proposed parameters and guidelines and tentatively sets proposed parameters and guidelines for hearing on December 4, 2009
- 07/30/09 Claimant notifies Commission they will be developing joint RRM with Finance on 07-TC-10
- 7/31/09 Commission adopts Statement of Decision on 07-TC-10 (Exhibit B)
- 09/03/09 Claimants submit proposed consolidated parameters and guidelines on 02-TC-04, 02-TC-11, and 07-TC-10 (Exhibit C)
- 10/06/09 State Controller's Office files comments on claimants' proposed parameters and guidelines (Exhibit D)
- 10/15/09 Department of Finance submits comments on claimants' proposed consolidated parameters and guidelines (Exhibit E)
- 12/16/09 Claimants file reply (Exhibit F)
- 06/25/10 Draft staff analysis and proposed parameters and guidelines issued for comment; hearing set for July 29, 2010 (Exhibit G)
- 07/09/10 Claimants request extension of time to file comments and postponement of hearing until September 30, 2010
- 07/13/10 Claimants request for extension and postponement approved
- 08/30/10 Claimants file comments on draft staff analysis (Exhibit H)

Background

On June 26, 2008, the Commission on State Mandates (Commission) considered the *Crime Statistics Reports for the Department of Justice* test claims (02-TC-04 and 02-TC-11) and determined that, beginning July 1, 2001, the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide the California Department of Justice (DOJ) with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, § 13014).
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, § 13023).
- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

On July 31, 2009, the Commission considered the *Crime Statistics Reports for the Department of Justice Amended* test claim (07-TC-10). The claim was originally filed as an amendment to, and severed from, test claims 02-TC-04 and 02-TC-11, *Crime Statistics Reports for the Department of Justice*. The Commission determined that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on local law enforcement agencies to report the following in a manner to be prescribed by the Attorney General:

- Any information that may be required relative to hate crimes, as defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of one or more of the following *perceived* characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.
- Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of *association with a person or group with one or more of the following actual or perceived characteristics*: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.

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the operative and effective date of Penal Code section 13023, as amended by Statutes 2004, chapter 700, as January 1, 2005.

These test claims were filed by a city and a county. Although the test claim statutes refer to “local law enforcement agencies” or “local government entity,” the Commission’s findings and decisions are limited to city and county claimants.²

Discussion

Staff reviewed the claimants’ proposed parameters and guidelines and the comments received from the Department of Finance and State Controller’s Office.

Non-substantive changes were made to the following sections of the proposed parameters and guidelines:

- The title of the parameters and guidelines was modified to reflect only the statutes that were approved by the Commission.
- Section I, Summary of the Mandate, and Section III, Period of Reimbursement, were amended to conform the parameters and guidelines to the Commission’s Statement of Decisions on these claims and to current law.

The parties have raised issues regarding Section IV, Reimbursable Activities. These issues are discussed below.

In addition, although the claimants notified the Commission that they would submit a joint reasonable reimbursement methodology with the Department of Finance, no filing has been submitted. The proposed parameters and guidelines authorize reimbursement based on actual costs claimed.

Section IV, Reimbursable Activities

One-Time Activities

The claimants request reimbursement for one-time activities to revise existing policies and procedures regarding the mandated activities. The Department of Finance and the State Controller’s Office do not object to reimbursement for revising policies and procedures, but have requested that the language in the parameters and guidelines be narrowed.

Staff recommends that the Commission move the activities under a separate “One-Time Activities” header, and revise and clarify the language to make it specific to the activities found by the Commission to be reimbursable state-mandated activities as follows:

² A similar test claim was filed by school districts and community college districts. (*Crime Statistics Reports (K-14)*, 02-TC-12), but was withdrawn by the claimant following the release of a final staff analysis in October 2009 recommending the denial of the claim on the ground that school districts are not mandated by state law to form their own law enforcement agencies and employ peace officers. (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, and *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355.) The Commission dismissed 02-TC-12 on January 29, 2010.

- A. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the reporting of the hate crime and demographic information required by Penal Code sections 12025, subdivisions (h)(1) and (h)(3), 12031, subdivisions (m)(1) and (m)(3), 13014, and 13023 to the California Department of Justice and the Attorney General.
- B. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the requirement in Penal Code section 13730, subdivision (a) (as amended by Stats. 1993, ch. 1230) to support all domestic violence related calls for assistance with a written incident report.

Ongoing Reporting Activities for Homicide, Hate Crimes, and Firearms Reports

The Commission approved these test claims to report the following crime data to the Department of Justice and the Attorney General's Office:

- Homicide Reports. A local government entity responsible for the investigation and prosecution of a homicide case to provide the California Department of Justice (DOJ) with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, § 13014).
- Hate Crimes. Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin based on hate crime (Pen. Code, § 13023). The test claim statute was amended in 2004 to clarify the definition of hate crime as provided in Penal Code section 422.55.
- Firearm Reports. For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).

For each of these activities, the claimants request reimbursement for recording in local law enforcement and district attorney reports, when the crime occurs or charge filed, the information required to be reported to the state. The claimants argue that the activity of "recording" is the most reasonable method of complying with the mandate to report the information to the state. The claimants argue as follows:

As noted above, the test for the inclusion of activities is whether the proposed activities are the most reasonable methods and necessary to carry out the mandated program of providing statistical information to the DOJ. For local

agencies to provide this information, it is necessary that they first obtain the information from the victims and the offenders. The local agencies have various methods at their disposal that they can employ to obtain the information. For example, the information can be obtained at the time the officer is on site and is creating a report, or at a later time with a follow-up call or in person visit, or by an in-office database search. Of these, the most efficient choice is to obtain the information when the officer is first called to the scene.

[¶]

It might be said that the act of creating a report is voluntary on the part of the local agencies and useful to their purposes of criminal investigation relying on the statement of decision in the Distracted Driver test claim (01-TC-12). In that case, the Commission reviewed a statute that required information be gathered from accident reports and conveyed to the California Highway Patrol (CHP). The Commission found that the recordation of information was not mandated. Although this may look similar enough to defeat the Claimant's proposed activities, the analysis fails. In the Distracted Driver test claim, the issue before the Commission was whether the recordation and collection was [sic] information was mandated. This issue requires the application of a very stringent test for test claimants to overcome. In the instant case, Claimants have passed that test and the Commission has already found the mandate. The issue is [sic] at present is the lesser test of whether the proposed activities are a necessary part of the existing mandate. The question is: If the local agencies opted not to record any information nor make any reports, could they do so in light of the new mandate? No. If any agency opted to no longer use written reports, they would still need to obtain information from victims and offenders, gather that information and report it to the DOJ. So, whether the local agencies prepare the report voluntarily or whether they use the information for their own purposes is not relevant to whether those activities are necessary to the [sic] carry out the mandate.³

The Department of Finance and the State Controller's Office contend that the activity of "recording" in local reports the information required to be reported to the state is not reimbursable and goes beyond the scope of the mandate approved by the Commission. The Department of Finance and the State Controller's Office contend that the reimbursable activity simply requires extracting or gathering information from existing records to complete the reports required by the state.⁴

"Recording" demographic and arrest information in local reports is not mandated by the plain language of the test claim statutes. However, section 1183.1, subdivision (a)(4), allows the Commission to include in the parameters and guidelines activities that are considered the "most reasonable methods of complying with the mandate." Section 1183.1, subdivision (a)(4), specifically provides that the parameters and guidelines shall contain a description of the specific costs and types of costs that are reimbursable and a description of the most reasonable methods

³ Exhibit F, Claimant's response to the Department of Finance and State Controller's comments, received December 16, 2009.

⁴ Exhibits D and E.

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.

For the reasons below, staff finds that the activity of recording in local law enforcement and district attorney reports the information required to be reported to the state does not constitute the most reasonable method of complying with the reporting mandates because local agencies have been required by other statutes to maintain such records since before the enactment of the test claim statutes.

The test claim statutes require the reporting of demographic information regarding the age, gender, race, and ethnicity of homicide victims and persons charged with a homicide and of persons charged with carrying a concealed or loaded firearm. Local agencies are also required to report annually and monthly “any information that may be required relative to hate crimes” to the Department of Justice.⁵ Such information includes a description of the criminal acts that caused physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated by the victim’s race, ethnicity, religion, gender, sexual orientation, or physical or mental disability.

Since 1955, Penal Code section 13020 has required local law enforcement agencies and district attorneys to install and maintain local records needed for the correct reporting of statistical data of crime.⁶ Penal Code section 13020 states in relevant part the following:

It shall be the duty of every city marshal, chief of police, railroad and steamship police, sheriff, coroner, district attorney, city attorney and city prosecutor having criminal jurisdiction, probation officer, county board of parole commissioners, work furlough administrator, the Department of Justice, [other state agencies], and every other person or agency dealing with crimes or criminals or with delinquency or delinquents, when requested by the Attorney General:

- (a) To install and maintain records needed for the correct reporting of statistical data required by him or her.

In addition, Penal Code sections 13102 and 13125, enacted in 1973 (Stats. 1973, ch. 992), require that all basic information stored in local criminal offender record information systems, be recorded in standard data elements that include the offender’s personal identification, including race, age, and gender, and a description of the arrest data. Local agencies are required by existing law to report the same data for each arrest made to the Department of Justice. (Pen. Code, § 13150.) Thus, keeping local records regarding the age, gender, race/ethnicity of the offender and the arrest data of the offender is required by other statutes and is not, by definition, the most reasonable method of complying with the reporting mandate in Penal Code sections 12025, 12031, 13014, and 13023.

Staff further finds that recording the age, gender, race/ethnicity of a homicide *victim* in local records is not a reasonable method of complying with the homicide reporting mandate imposed by Penal Code section 13014. Since 1969, local agencies have been required to report

⁵ “Criminal Statistics Reporting Requirements,” published by the Department of Justice in February 2006, pages 16 and 17. (Exhibit I.)

⁶ Statutes 1955, chapter 1128.

information about justifiable homicides to the Department of Justice on a form provided by the Department of Justice.⁷ The report is due monthly and is filed on either the Department of Justice form BCS-15 (Supplemental Homicide Report) or the FBI form (Return A.)⁸ The Supplementary Homicide Report, revised July 11, 1975, and in September 1990, requires the reporting of the victim's age, sex, and race.⁹ "Justifiable homicide" is determined by the trier of fact and connotes only the use of force which is necessary, or which reasonably appears to be necessary, to resist other party's misconduct. Use of excessive force destroys the justification.¹⁰ Thus, before the enactment of the test claim statute, local agencies were already required to record and report information to the Department of Justice regarding the age, sex, and race of the victims of homicide determined to be justified. In addition, the county coroner has the duty to inquire into and determine the circumstances, manner, and cause of all violent, sudden, or unusual deaths, and is further required by law to keep an official "Coroner's Register" that contains the "name and any aliases of the deceased, when known, *including such description as may be sufficient for identification ...*" (Emphasis added.)¹¹ The information maintained by the coroner would include the victim's sex, age, and race.

Therefore, staff finds that the requested activity of recording in local law enforcement and district attorney reports the information required to be reported to the state is not reimbursable.

Finally, claimants requested reimbursement for a supervisor to review and edit the homicide, hate crimes, and firearms reports to the state in their proposed parameters and guidelines. Staff recommended that these activities be denied in the draft staff analysis because these activities were not approved by the Commission in the Statement of Decision and there was no evidence in the record that review and edit activities are reasonable methods of complying with the mandate to report the information to the state.

In comments to the draft staff analysis, the claimants "concur with the Staff on the issues of One-Time Activities and Firearm Reports," but continue to request reimbursement for review and edit activities for the homicide and hate crimes reports. In support of the request, the claimants have submitted a declaration from Linda Beswick, Community Service Officer for the City of Newport Beach, who has prepared the DOJ reports since 1980.¹² Her declaration states in relevant part the following:

⁷ Penal Code section 13022 (Stats. 1969, ch. 1089).

⁸ "Criminal Statistics Reporting Requirements," published by the Department of Justice in 2002 and 2006, page 10. (Exhibit I.)

⁹ See Department of Justice comments on the test claim, dated January 28, 2003. (Exhibit I.)

¹⁰ Justifiable homicide is defined in Penal Code sections 196 and 197, and connotes only the use of force which is necessary, or which reasonably appears to be necessary, to resist other party's misconduct. Use of excessive force destroys the justification. (*People v. Young* (1963) 214 Cal.App.2d 641.)

¹¹ Government Code sections 27463, 27491.

¹² Exhibit E.

2. Our officers create reports in the field using either paper reports or by entering the information into a computer. The information entered into the computer is later printed.
3. As part of my job duties, I pick up the paperwork in the Records Department. I code the information into our Altaris system. After coding, I run reports which provide summary information. I then reconcile the system report with the paperwork using the system's editing function.
3. [sic] Once the information is complete, I prepare the DOJ reports which are signed by my supervisor and sent to the DOJ.
4. I have been contacted by the DOJ to verify information or for additional explanation regarding the reports. This occurs 2 to 3 times a year.

Staff finds that a supervisor's review and edit of every homicide and hate crime report sent to the state is not a reasonable method of complying with the mandated activities here. The information required to be reported to the state is extracted from existing local records. The Department of Justice, in comments to these test claims, filed copies of the homicide and hate crime reporting forms. The current Supplementary Homicide Report (Form BCIA 15) does not require the signature of a supervisor. In addition, the hate crime report requests the name of the person preparing the report, but does not require the name or signature of a supervisor.¹³ Thus, review and edit of every homicide and hate crime report sent to the state is not reimbursable.

For the same reasons, staff continues to find that review and edit activities of firearm reports sent by the district attorneys' office to the Attorney General's Office are not eligible for reimbursement. Like the other state reporting forms, the reporting form for the firearm report (CJSC 4) does not require the signature of a supervisor and the information reported is extracted from local records.¹⁴

However, based on the declaration of Linda Beswick, staff finds that verifying information in the homicide and hate crime reports and providing an additional explanation to the state regarding these reports is reasonably necessary to comply with the mandated activities only when specifically requested by the Department of Justice. This activity does not apply to the firearm reports issued by the district attorney's office to the Attorney General since there is no evidence in the record from a district attorney's office to support the finding.

Staff has modified the language proposed by the claimant for these reporting activities to include the citation to the test claim statutes. The proposed language also authorizes reimbursement for extracting the demographic information required to be reported from local records, reporting the information to the Department of Justice on forms identified in the Department of Justice's publication "Criminal Statistics Reporting Requirements" and/or in the manner prescribed by the Department of Justice, and verifying information and/or providing an additional explanation about homicide and hate crime reports when specifically requested by the Department of Justice or Attorney General's Office. The proposed language is as follows (the ~~strikeout~~ and underline version is in the attached claimant proposed consolidated parameters and guidelines, as modified by staff):

¹³ Exhibit I.

¹⁴ Exhibit I.

A. Homicide Reports: (Pen. Code, § 13014; Stats. 1992, ch. 1338)

For a city, county, or city and county responsible for the investigation and prosecution of a homicide case, to provide the California Department of Justice, on a form distributed by the California Department of Justice, with demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background.

The following activities are eligible for reimbursement:

1. Extract demographic information from existing local records about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background, from local records in order to report the information to Department of Justice.
2. Report to the Department of Justice, on a monthly basis, demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background. Reporting may be accomplished electronically via the Electronic-Crime and Arrest Reporting Systems (E-CARS) Plus, or manually by submitting DOJ Form BCIA 15 (Supplemental Homicide Report), or other form distributed in accordance with Penal Code section 13014 by the Department of Justice.
3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice

Reimbursement is not required to review and edit every report.

B. Hate Crime Reports: (Pen. Code, § 13023; Stats. 1989, ch. 1172; Stats. 1998, ch. 933; Stats. 2000, ch. 626; Stats. 2004, ch. 700)

For city, county, and city and county law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to hate crimes:

The following activities are eligible for reimbursement:

1. Extract the information required by the Attorney General relative to hate crimes from existing law enforcement records in order to report the information to the Department of Justice.¹⁵
2. Report to the Department of Justice on an annual and monthly basis, in a manner prescribed by the Attorney General, the information required relative to hate crimes. Reporting may be accomplished electronically via the Hate Crime Analysis, Tracking & Evaluation (HATE) System, manually by

¹⁵ Penal Code section 13023 was amended in 2004 to clarify the definition of hate crime as provided in Penal Code section 422.55. (Stats. 2004, ch. 700.)

submitting the agency crime report, or any other manner prescribed by the Attorney General.

3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice

Reimbursement is not required to review and edit every report.

- C. Firearm Reports: (Pen. Code, §§ 12025, subd. (h)(1) & (h)(3) & 12031, subd. (m)(1) & (m)(3); Stats. 1999, ch. 571)

For district attorneys to submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

The following activities are eligible for reimbursement *from July 1, 2001, through December 31, 2004 only*:

1. Extract the following information from existing local law enforcement records in order to report the information to the Attorney General: race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.
2. Report to the Attorney General on Form CJSC 4, or in another manner prescribed by the Attorney General, profiles by race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

Reimbursement is not required to review and edit the report.

Written Report for Domestic Violence Related Calls for Assistance

The Commission determined that Penal Code section 13730, subdivision (a), as amended in 1993 (Stats. 1993, ch. 1230) imposes a reimbursable state-mandated activity on local law enforcement agencies to “support all domestic-violence related calls for assistance with a written incident report.” The 1993 amendment to the statute added only the underlined language in subdivision (a).

- (a) Each law enforcement agency shall develop a system, by January 1, 1986, for recording all domestic violence-related calls for assistance made to the department including whether weapons are involved. All domestic violence-related calls for assistance shall be supported with a written incident report, as described in subdivision (c), identifying the domestic violence incident. Monthly, the total number of domestic violence calls

received and the numbers of those cases involving weapons shall be compiled by each law enforcement agency and submitted to the Attorney General.

- (b) The Attorney General shall report annually to the Governor, the Legislature, and the public the total number of domestic violence-related calls received by California law enforcement agencies, the number of cases involving weapons, and a breakdown of calls received by agency, city, and county.
- (c) Each law enforcement agency shall develop an incident report form that includes a domestic violence identification code by January 1, 1986. In all incidents of domestic violence, a report shall be written and shall be thus identified on the face of the report as a domestic violence incident.¹⁶

As indicated in the Statement of Decision in the present case for 02-TC-04 and 02-TC-11, the Commission had issued prior decisions on the 1984, 1995, and 2001 amendments to Penal Code section 13730, subdivision (c), and adopted parameters and guidelines, which authorized reimbursement for the costs associated with the development of a domestic violence incident report form, writing the domestic violence reports, and compiling and submitting monthly summary reports to the Attorney General.¹⁷ The 1995 and 2001 amendments required additional information to be included in the incident reports; i.e., notations of whether the officer observed signs that the alleged abuser was under the influence of alcohol or controlled substances, whether law enforcement had previously responded to a domestic violence call at the same address involving the same alleged abuser or victim, and whether a firearm or other deadly weapon was present at the scene.¹⁸ The 1984, 1995, and 2001 mandates have been continuously suspended by the Legislature and made voluntary in each fiscal year of the suspension pursuant to Government Code section 17581.

The 1993 amendment to Penal Code section 13730, subdivision (a), that requires local law enforcement agencies to “support all domestic-violence related calls for assistance with a written incident report” was not pled in these earlier test claims and, thus, had never been suspended by the Legislature. Thus, the Commission determined that the activity constituted a mandated new program or higher level of service.

The claimants request that the parameters and guidelines authorize reimbursement to:

- Gather information on all domestic-violence related calls for assistance for the incident report.
- Draft the written incident report.

¹⁶ The bill enacted in 1993 to amend Penal Code section 13730 (AB 2250) also made amendments to the definition of domestic violence in Penal Code section 13700. The purpose of the bill was to clarify the definition and reporting requirements so that law enforcement agencies would interpret the provisions uniformly. (Exhibit I, Senate Floor Analysis, dated September 10, 1993, Assembly Bill 2250 (1993-1994 Leg. Sess.).)

¹⁷ *Domestic Violence Information* (CSM 4222), *Domestic Violence Training and Incident Reporting* (CSM 96-362-01), and *Crime Victims’ Domestic Violence Incident Reports II* (CSM 02-TC-18).

¹⁸ See current Penal Code section 13730, subdivision (c) (1)-(3).

- Review or edit the report.

The State Controller's Office filed comments proposing changes and adding the activity to complete and submit a domestic violence incident report to the Attorney General's Office.

The Department of Finance requests modification to the claimant's proposed language, as follows:

- ~~Gather information~~ Prepare a written incident report on all domestic-violence related calls for assistance ~~for the incident report.~~
- ~~Draft the written incident report.~~
- ~~Review or edit the report.~~

Staff disagrees with the language proposed by the State Controller's Office that allows reimbursement to complete and submit a domestic violence incident report to the Attorney General's Office. The activity to complete and submit a report to the Attorney General's Office was not added by the 1993 statute and was previously included in the parameters and guidelines for *Domestic Violence Information* (CSM 4222), which has been suspended by the Legislature. In addition, the activity was not approved by the Commission as a reimbursable activity in these test claims; 02-TC-04, 02-TC-11, or 07-TC-10. Thus, the activity is not reimbursable here.

Furthermore, the draft staff analysis for this item recommended that the Commission deny claimants' request for reimbursement for review and edit activities because there was no evidence in the record to support a finding that review and edit activities were the "most reasonable methods of complying with the mandate" to "support all domestic-violence related calls for assistance with a written incident report." In response to the draft staff analysis, the claimant filed a declaration from Sergeant Alan S. Kobayashi with the Sacramento County Sheriff's Department. Sergeant Kobayashi declares as follows:

That I am a Sheriff's Sergeant with the Sacramento County Sheriff's Department, and I am one (1) of the sergeants responsible for reviewing domestic violence incident reports received from Field Services. I have been in this position since 1997, and I have knowledge of the facts stated herein and if called to testify, I could do so competently.

In my role as a sergeant I have to review all domestic violence reports received for accuracy, completeness, neutrality. Review is an important part of the process because the Domestic Violence report is relied upon in criminal and family law courts. It is also relied upon by law enforcement as an accurate historical record of Domestic Violence calls between the parties when new calls come in. It takes approximately 12-14 minutes to review each report.¹⁹

Based on Sergeant Kobayashi's declaration, staff finds that reviewing and editing the domestic violence incident report is the most reasonable method of complying with the mandate to have the report. The domestic violence incident report is evidence that may be filed with the court to

¹⁹ Exhibit H, attached to claimants' response to the draft staff analysis received August 30, 2010.

support a criminal charge or family law action. In addition, the information in the report is later reported to the Attorney General. (Pen. Code, § 13730, subd. (b), (Stats. 1993, ch. 1230).)

Staff recommends that the Commission approve reimbursement for review and edit activities. Staff further recommends that the language in the parameters and guidelines for this activity be modified to closely match the language of Penal Code section 13730, subdivision (a). Staff recommends the following language:

D. Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

The following activity, performed by local law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.

Claiming Costs Based on a Time Study

In response to the draft staff analysis, the claimants request that the Commission include time study language in the parameters and guidelines because of the repetitive nature of the reimbursable activities. The claimants state the following:

Finally, this mandate was considered for a Reasonable Reimbursement Methodology (hereinafter “RRM”) negotiated with the Department of Finance. Too many variables among the jurisdictions provided it was not a good RRM candidate, at this time. The repetitive nature of the reimbursable activities, however, will lend itself to jurisdictional time studies. Therefore, Claimants request that Staff add its standard time study language to the Parameters and Guidelines.²⁰

Staff has included the following time study language in the proposed parameters and guidelines.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts 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.

Conclusion and Staff Recommendation

Staff recommends that the Commission:

- Adopt the claimants’ proposed consolidated parameters and guidelines, as modified by staff, beginning on page 19.
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

²⁰ Exhibit H.

**CLAIMANTS' PROPOSED CONSOLIDATED
PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF**

Penal Code Sections 12025, Subdivision (h)(1) and (h)(3), 12031, Subdivision (m)(1) and (m)(3), 13014, 13023, and 13730, Subdivision (a)

~~Statutes 1984, Chapter 1609 (SB 1472); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); and Statutes 2000, Chapter 626 (AB 715); Statutes 2001, Chapter 483 (AB 469)~~

Crime Statistics Reports for the Department of Justice
02-TC-04 and 02-TC-11

and

Penal Code Section 13023

Statutes 2004, chapter 700 (SB 1234)

Crime Statistics Reports for the Department of Justice Amended
07-TC-10

I. SUMMARY OF THE MANDATE

On June 26, 2008, the Commission on State Mandates (Commission) ~~adopted a Statement of Decision finding that the test claim legislation on the original test claim imposes 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 following reimbursable activities:~~ considered the *Crime Statistics Reports for the Department of Justice* test claims (02-TC-04 and 02-TC-11) and determined that, beginning July 1, 2001, the test claim statutes impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- A local government entity responsible for the investigation and prosecution of a homicide case to provide the California Department of Justice (DOJ) with demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background (Pen. Code, § 13014).
- Local law enforcement agencies to report, in a manner to be prescribed by the Attorney General, any information that may be required relative to any criminal acts or attempted criminal acts to cause physical injury, emotional suffering, or property damage where there is a reasonable cause to believe that the crime was motivated, in whole or in part, by the victim's race, ethnicity, religion, sexual orientation, or physical or mental disability, or gender or national origin (Pen. Code, § 13023).

- For district attorneys to report annually on or before June 30, to the Attorney General, on profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information. The Commission finds that this is a reimbursable mandate from July 1, 2001 (the beginning of the reimbursement period for this test claim) until January 1, 2005 (Pen. Code, §§ 12025 subd. (h)(1) & (h)(3) & 12031 subd. (m)(1) & (m)(3)).
- For local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report (Pen. Code, § 13730, subd. (a), Stats. 1993, ch. 1230).

~~On July 31, 2009, the Commission adopted a Statement of Decision finding that the test claim legislation on the amended test claim imposes 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 following reimbursable activities:~~

- ~~• For local law enforcement agencies beginning January 1, 2004, to report the following in a manner to be prescribed by the Attorney General:

 - ~~○ Any information that may be required relative to hate crimes, as defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of one or more of the following *perceived* characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.~~
 - ~~○ Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of *association with a person or group with one or more of the following actual or perceived characteristics*: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.~~~~

On July 31, 2009, the Commission considered the *Crime Statistics Reports for the Department of Justice Amended* test claim (07-TC-10). The claim was originally filed as an amendment to, and severed from, test claims 02-TC-04 and 02-TC-11, *Crime Statistics Reports for the Department of Justice*. The Commission determined that Penal Code section 13023 (Stats. 2004, ch. 700) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution on local law enforcement agencies to report the following in a manner to be prescribed by the Attorney General:

- Any information that may be required relative to hate crimes, as defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of one or more of the following *perceived* characteristics of the victim: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.
- Any information that may be required relative to hate crimes, defined in Penal Code section 422.55 as criminal acts committed, in whole or in part, because of *association with a person or group with one or more of the following actual or perceived*

characteristics: (1) disability, (2) gender, (3) nationality, (4) race or ethnicity, (5) religion, (6) sexual orientation.

On April 12, 2010, the Commission issued a Corrected Statement of Decision in *Crime Statistics Reports for the Department of Justice Amended (07-TC-10)* to correctly identify the operative and effective date of Penal Code section 13023, as amended by Statutes 2004, chapter 700, as January 1, 2005.

These test claims were filed by a city and a county. Although the test claim statutes refer to “local law enforcement agencies” or “local government entity,” the Commission’s findings and decisions are limited to city and county claimants.

II. ELIGIBLE CLAIMANTS

Any county, city, or city and county.

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 City of Newport Beach filed the original test claim on September 6, 2002. Therefore, costs incurred pursuant to Crime Statistics Reports for the Department of Justice Test Claim are reimbursable on or after July 1, 2001. The City of Newport Beach and the County of Sacramento jointly amended the test claim. Costs incurred pursuant to the amended test claim are reimbursable on or after January 1, 2004.~~

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

Government Code section 17557 states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The City of Newport Beach and the County of Sacramento filed the *Crime Statistics Reports for the Department of Justice* test claims (02-TC-04 and 02-TC-11) on September 6, 2002, and November 22, 2002, respectively, establishing eligibility for reimbursement beginning July 1, 2001. The *Crime Statistics Reports for the Department of Justice Amended* test claim (07-TC-10) was filed as an amendment to 02-TC-04 and 02-TC-11 and, pursuant to Government Code section 17557, subdivision (e), does not affect the filing date or period of reimbursement of the original test claims. However, Penal Code section 13023, as amended by Statutes 2004, chapter 700, became operative and effective on January 1, 2005. Therefore, the costs incurred for compliance with the mandated activities found in Penal Code section 13023, as amended by Statutes 2004, chapter 700, are reimbursable on or after January 1, 2005.

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, 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 that 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.
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 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. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts 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.

For each eligible claimant, the following activities are ~~reimbursable~~ eligible for reimbursement:

One-Time Activities

- A. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the reporting of the hate crime and demographic information required by Penal Code sections 12025, subdivisions (h)(1) and (h)(3), 12031, subdivisions (m)(1) and (m)(3), 13014, and 13023 to the California Department of Justice and the Attorney General.
- B. Revise existing policies and procedures to reflect the ongoing activities listed in these parameters and guidelines regarding the requirement in Penal Code section 13730, subdivision (a) (as amended by Stats. 1993, ch. 1230) to support all domestic violence related calls for assistance with a written incident report.

Ongoing Activities

- A. Homicide Reports: (Pen. Code, § 13014; Stats. 1992, ch. 1338)

~~One Time Activity:~~

- ~~● Revise existing policies and procedures regarding the filing of homicide reports, including but limited to [sic], the recording, collection, drafting, review, and submission of reports.~~

~~Ongoing Activities:~~

For a city, county, or city and county responsible for the investigation and prosecution of a homicide case, to provide the California Department of Justice, on a form distributed by the California Department of Justice, with demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background.

The following activities are eligible for reimbursement:

- ~~● Record in law enforcement reports demographic information about the victim and the person or persons charged with the crime, including the victim's and person's age, gender, race, and ethnic background.~~
 - ~~● Gather and consolidate demographic information from law enforcement reports.~~
 - ~~● Draft or complete report regarding demographic information for the California Department of Justice (DOJ).~~
 - ~~● Review and edit report.~~
 - ~~● Submit report to DOJ via fax, mail or otherwise as acceptable by the DOJ.~~
1. Extract demographic information from existing local records about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background, from local records in order to report the information to DOJ.

2. Report to the Department of Justice, on a monthly basis, demographic information about the homicide victim and the person or persons charged with the crime of homicide, including the victim's and person's age, gender, race, and ethnic background . Reporting may be accomplished electronically via the Electronic-Crime and Arrest Reporting Systems (E-CARS) Plus, or manually by submitting DOJ Form BCIA 15 (Supplemental Homicide Report), or other form distributed in accordance with Penal Code section 13014 by the Department of Justice.
3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice.

Reimbursement is not required to review and edit every report.

- B. Hate Crime Reports: (Pen. Code, § 13023; Stats. 1989, ch. 1172; Stats. 1998, ch. 933; Stats. 2000, ch. 626; Stats. 2004, ch. 700)

One Time Activity:

~~Revise existing policies and procedures regarding the filing of hate crimes reports, including but limited to [sic], the recording, collection, drafting, review, and submission of reports.~~

Ongoing Activities:

- ~~• Record in law enforcement reports any information that may be required by Attorney General relative to hate crimes, as defined in Penal Code sections 422.55 and 422.56.~~
- ~~• Gather and consolidate information from law enforcement reports.~~
- ~~• Draft and consolidate information from law enforcement reports.~~
- ~~• Review and edit report~~
- ~~• Submit report to Attorney General via fax, mail or otherwise as acceptable by the Attorney General.~~

For city, county, and city and county law enforcement agencies to report to the Department of Justice, in a manner to be prescribed by the Attorney General, any information that may be required relative to hate crimes:

The following activities are eligible for reimbursement:

1. Extract the information required by the Attorney General relative to hate crimes from existing law enforcement records in order to report the information to the Department of Justice.¹
2. Report to the Department of Justice on an annual and monthly basis, in a manner prescribed by the Attorney General, the information required relative to hate crimes. Reporting may be accomplished electronically via

¹ Penal Code section 13023 was amended in 2004 to clarify the definition of hate crime as provided in Penal Code section 422.55. (Stats. 2004, ch. 700.)

the Hate Crime Analysis, Tracking & Evaluation (HATE) System, manually by submitting the agency crime report, or any other manner prescribed by the Attorney General.

3. Verify information contained in the report or provide an additional explanation about the report when specifically requested by the Department of Justice.

Reimbursement is not required to review and edit every report.

~~€. Firearm Reports: (Pen. Code, §§ 12025, subd. (h)(1) & (h)(3) & 12031, subd. (m)(1) & (m)(3); Stats. 1999, ch. 571) *Reimbursable from July 1, 2001 to January 1, 2005.*~~

~~One Time Activity:~~

- ~~● Revise existing policies and procedures regarding the filing of firearm reports, including but limited to [sic], the recording, collection, drafting, review, and submission of reports.~~

~~Ongoing Activities:~~

- ~~● Record in law enforcement and district attorney files profiles by race, age, gender, and ethnicity any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or under Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.~~
- ~~● Gather and consolidate profiles from law enforcement reports and district attorney files.~~
- ~~● Review or edit report.~~
- ~~● Submit report to Attorney General via fax, mail or otherwise as acceptable by the Attorney General.~~

For district attorneys to submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under section 12025 (carrying a concealed firearm) or section 12031 of the Penal Code (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

The following activities are eligible for reimbursement *from July 1, 2001, through December 31, 2004 only:*

1. Extract the following information from law enforcement records in order to report the information to the Attorney General: race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

2. Report to the Attorney General on Form CJSC 4, or in another manner prescribed by the Attorney General, profiles by race, age, gender, and ethnicity for any person charged with a felony or misdemeanor under Penal Code section 12025 (carrying a concealed firearm) or Penal Code section 12031 (carrying a loaded firearm in a public place), and any other offense charged in the same complaint, indictment, or information.

Reimbursement is not required to review and edit the report.

- D. Domestic Violence Related Calls for Assistance: (Pen. Code, § 13730, subd. (a); Stats. 1993, ch. 1230)

~~One-Time Activity:~~

- ~~• Revise existing policies and procedures regarding the preparation of domestic violence related calls for assistance incident reports, including but limited to [sic], the recording, collection, drafting, review, and submission of reports.~~

~~Ongoing Activities:~~

- ~~• Gather information on all domestic violence related calls for assistance for incident report.~~
- ~~• Draft written incident report.~~
- ~~• Review or edit report.~~

The following activity, performed by city, county, and city and county law enforcement agencies, is eligible for reimbursement:

1. Support all domestic-violence related calls for assistance with a written incident report.
2. Review and edit the report.

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 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.

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 the 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 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 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) separate 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.

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 addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

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

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 (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.